85-1812

Supreme Court, U.S.
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No.____

IN THE
SUPREME COURT OF THE UNITED STATES

Term, 1986

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION LOCAL 1357,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

Where General Counsel of the National Labor Relations Board fails to meet the threshold burden of a prima facie showing of unlawful discrimination and where Respondent affirmatively establishes that the charging party would have been fired for permissible reasons regardless of purported protected activity, can there be a finding that Respondent's conduct was violative of the Act?

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UNITED FOOD AND COMMERCIAL WORKERS
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United Food and Commercial Workers International Union Local 1357, Respondent, respectfully prays that this court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit entered in the above case on December 4, 1985. That court denied Respondent's request for rehearing in banc of a decision by a three judge panel entering a judgment granting the application for enforcement of an order of the National Labor Relations Board issued against Respondent and denying Respondent, Local 1357's cross application for review of said order. The order in question found that Respondent, Local 1357, violated

Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act, 29 U.S.C. Section 151, et seq. by discharging an employee, Elizabeth Murphy, for engaging in protected, concerted strike activity.

OPINIONS BELOW

This petition results from a decision by a three judge panel of the United States Court of Appeals for the Third Circuit which entered a judgment without opinion granting the application for enforcement of an order of the National Labor Relations Board issued against Respondent. The decision also denied Respondent, Local 1357's cross application for review of said order which found that Respondent, violated Sections 8(a)(1) and (3) of the National Labor Relations Act, 29 U.S.C. Section 151, et seq. by discharging an employee, Elizabeth Murphy, for engaging in protected, concerted strike activity.

The Respondent's cross application for review requested the circuit court to deny enforcement and vacate, in whole, said order because the National Labor Relations Board's determination that the Respondent committed an unfair labor practice by dismissing the charging party was not supported by substantial evidence on the record as a whole. In chronological order, the relevant orders and decrees by the Third Circuit and National Labor Relations Board are as follows:

1. An order issued on October 27, 1983 by Administrative Law Judge Marion C. Ladwig, finding that the United Food and Commercial Workers Local 1357 engaged in an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act by discharging Elizabeth Murphy for engaging in protected, concerted strike activity (Appendix A, infra P.1a)

2. A decision and order issued on December 14, 1984, by a three member panel of the National Labor Relations Board, which affirmed the decision of the Administrative Law Judge Marion C. Ladwig in this case. (Appendix B, infra P.28a).

3. A judgment order, entered on November 6, 1985, by a three judge panel of the United States Court of Appeals for the Third Circuit which granted the National Labor Relations Board's application for enforcement of the order issued against Respondent, United Food and Commercial Workers Local 1357 and denied Respondent, United Food and Commercial Workers Local 1357's cross application for review of that order. (Appendix C, infra P.33a).

4. An order entered on December 4, 1985 by the United States Court of Appeals for the Third Circuit which denied Respondent's request for a rehearing in banc of the above captioned case. (Appendix D, infra P.35a).

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

In the event this court determines that the issuance of a writ other than certiorari might better aid the jurisdiction of this court and the administration of justice, the Respondent also invokes the jurisdiction of this court under the All Writs Act, as amended, 28 U.S.C. Section 1651(a).

STATUTES INVOLVED

This case involves the interpretation and application of the following statutes: Sections 7, 8(a)(1) and (3) of the National Labor Relations Act, as amended, 61 Stat. 136 et seq., 29 U.S.C. Sections 157, 158(a)(1) and 158(a)(3). (Appendix E, infra P.36a)

STATEMENT OF THE CASE

This petition seeks review of a decision by the Third Circuit entering judgment which granted the application for enforcement of the National Labor Relations Board's Order charging the Respondent with committing an unfair labor practice by discharging employee, Elizabeth Murphy.

A complaint was issued on February 10, 1982 and a hearing was held in this matter before an administrative law judge on September 16 and 17, 1982. On October 27, 1983, Administrative Law Judge Marion C. Ladwig issued a decision finding that Ms. Murphy was unlawfully discharged by the Respondent. On December 14, 1984, the National Labor Relations Board decided to affirm the Judge's rulings, findings and conclusions and to adopt the recommended and modified order holding that United Food and Commercial Workers Local 1357 had committed the alleged unfair labor practice in question.

Thereafter, the National Labor Relations Board sought enforcement of said order in the Third Circuit Court of Appeals and Respondent filed a cross application for review of said order. On November 6, 1985, a three judge panel of the Third Circuit entered a judgment, without an opinion, granting the application for enforcement of the National Labor Relations Board's order and denying Respondent's cross application for review. On December 4, 1985, Respondent's subsequent petition for rehearing in banc was denied.

The Respondent submits that in granting the Board's application for enforcement, the Third Circuit failed to adhere to the firmly established standard of review under Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e) and erroneously ruled that the National Labor Relations Board's findings and conclusions in this matter have a reasonable basis in law and rest on "substantial evidence on the record as a whole."

This contention is highlighted by the fact that the record indicates that the General Counsel's attempt to meet the threshold burden of making a prima facie showing of unlawful discrimination rests on the uncorroborated and unreliable testimony of an interested witness, namely, the discriminatee herself, who claims that a hearsay threat of reprisal by her employer was passed on to her by a supervisor.

In fact, the credited testimony of the discriminatee on crucial matters in the case is inherently unreasonable and self-contradictory. Perhaps indicative of this entire matter are the circumstances surrounding the false accusations made by the grievant on her worker's compensation form, which the administrative law judge noted in his opinion. On this point, the administrative law judge observed that the grievant stated on her claim form that "her arm was pulled out of the socket affecting her chest cavity." (Appendix A, infra P.10a) However, the record is clear that Ms. Murphy's arm was never pulled out of its socket at any time — and thus is reflective of the general distortion and exaggeration characterizing her testimony. Despite this contradiction, the administrative law judge substantially credited the grievant's testimony in this respect. Thus, the false accusations the grievant submitted on her worker's compensation form, along with other examples, like Ms. Murphy's incredible version of the June 9th meeting between her and Respondent's President and the conflicting reasons the grievant gave for being out of work on sick leave for six weeks, provide clear proof that the grievant basically contributed testimony to the case which was unreliable and uncorroborated. (Appendix F, infra P.57-59, 65-78a)

The administrative law judge also concludes that the timing and abruptness of United Food and Commercial

Workers Local 1357's action against Ms. Murphy supports a finding of unlawful motive. However, a more accurate analysis of this case shows that the timing of these events are just a mere coincidence which has absolutely no independent legal significance.

At the same time, the administrative law judge also attempts to prop up an already non-existent prima facie case on discriminatory motive by concluding that the National Labor Relations Board's finding of unlawful motive is further supported by the existence of so called shifting defenses on the part of the Respondent. However, this contention, too, is not supported by substantial evidence.

In fact, it is clear that the administrative law judge incorrectly confused an argument in the Union's Brief with respect to "major factors" which supported the union's decision to take specific action to aid Ms. Murphy with her apparent need of health care with the issue of what reasons supported "the discharge of Ms. Murphy."

At the same time, Respondent asserts that substantial evidence in the record considered as a whole indicates that the grievant would have been fired for permissible reasons. Clearly, Ms. Murphy was ultimately discharged for reasons of insubordination which interrelates to her conduct of June 10, 1984 and other bizarre events in which she was involved, demonstrating her need for professional mental health care.

However, the administrative law judge ignored the firmly established evidence on the events surrounding Ms. Murphy's discharge and made credibility determinations in this regard which were inherently unreasonable or self-contradictory. The Third Circuit upheld these unreasonable determinations despite firmly established precedential authority instructing it to disregard this type of determination.

REASONS FOR GRANTING THE WRIT

I. The Decision by the Third Circuit is Contrary To the Decision of this Court.

A. Substantial Evidence on the Record as a Whole Indicates That the General Counsel of the National Labor Relations Board Failed to Meet the Threshold Burden of a Prima Facie Showing That Protected Conduct Was a Motivating Factor in the Respondent's Decision to Fire the Grievant.

In this case, the Board determined that Elizabeth Murphy was discharged from her employment with Local 1357 in retaliation for engaging in protected concerted activity. In considering the evidence in a dual motive discharge case like the one at bar, the Board is required to follow the *Wrightline* test approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 103 S.Ct. 2469, 77 L.Ed. 2d 667 (1983). *Wright Line, Inc.*, 251 NLRB 1083, 105 LRRM 1169 (enforced) 662 F.2d 899 (1980), articulated a substantive standard and a burden of proof rule for deciding mixed motive discharge cases. Borrowing from the Supreme Courts' analysis in *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed. 2d 471 (1974), the Board decided that a mixed motive discharge is not violative of the act when an employee would have been discharged even if he had not engaged in any protected activity.

Under this analysis, the General Counsel must initially establish a *prima facie* case that protected conduct was a motivating factor in an employer's decision. The burden then shifts to the employer to demonstrate that the decision would have been the same even in the absence of protected conduct. *E.I. Dupont v. NLRB*, 724 F.2d 1061 (3d Cir. 1983). Although the burden shifts under this approach, the shift does not undermine the established principle that the General Counsel must still

establish an unfair labor practice by a preponderance of the evidence. *Wright Line, supra.*

In considering whether the General Counsel and the Board has met its obligations under *Wright Line*, it is firmly established that this Court's scope of review is confined to a determination of whether substantial evidence on the record as a whole supports the Board's determination. *National Labor Relations Act*, §10(e), as amended, 29 U.S.C.A. Section 6151 et seq. See *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 2d 456 (1951); *Graham Architectural Products Corp. v. NLRB*, 697 F.2d 534, 537 (3d Cir. 1983).

Indeed, this is a limited scope of review. However, in applying this standard, the Third Circuit in *NLRB v. Craw*, 565 F.2d 1267 (3d Cir. 1977) points out that the Supreme Court in *Universal Camera, supra* did, in fact, announce that "a Court of Appeals must take into account the record as a whole, *including any evidence detracting from the Board's view* in determining whether there is substantial evidence to support the Board's findings."

In this regard, the court is usually bound by the credibility choices of the administrative law judge where such choices are appropriate. However, the court is able to disregard credibility determinations that are inherently unreasonable or self-contradictory. *NLRB v. Randle-Eastern Ambulance Service, Inc.*, 584 F.2d 720 (5th Cir. 1978); *NLRB v. National Fixtures, Inc.*, 574 F.2d 1305 (5th Cir. 1978). Also, the court may disregard the administrative law judge's decision to credit the largely uncorroborated testimony of a discriminatee-employee and to discredit the testimony of all contrary witnesses. *NLRB v. American Art Industries, Inc.*, 415 F.2d 1223 (5th Cir. 1969). Finally, it is established that the reviewing court is not compelled to respect credibility choices based on an inadequate reason or no reason at all. *NLRB v. Moore Business Forms, Inc.*, 574 F.2d 835 (5th Cir. 1978).

In granting the Board's application for enforcement, the Third Circuit failed to adhere to these principles and erroneously ruled that there is substantial evidence to support the Board's findings. Accordingly, the case herein appears to place the Third Circuit in direct conflict with this firmly established authority. In order to remedy this unjust decision in the case at bar and prevent the development of an erroneous precedent, it is necessary for this Honorable Court to intervene in this matter.

In the instant case, the General Counsel argues that only three areas of evidence in the case support the Board's findings of unlawful motive in the discharge of Ms. Murphy: (1) evidence of unlawful motive based on the alleged threat conveyed to Ms. Murphy by Secretary-Treasurer Rosmini; (2) the timing and abruptness of Local 1357's action against Murphy and finally, (3) the Board's finding of unlawful motive is further supported by the existence of so called shifting defenses on the part of Local 1357. However, these conclusions have absolutely no legal nor factual support.

In the instant matter, a review of the direct testimony of Mr. Rosmini in which he recalled his entire conversation with Ms. Murphy indicates that at no time was there any such threat conveyed by him to Ms. Murphy. In fact, Mr. Rosmini, gave a more credible, detailed account of that same conversation than Ms. Murphy. The Judge should have credited Mr. Rosmini since it was clear that the threat simply did not occur and was only a figment of Ms. Murphy's imagination. (Appendix F, infra P.61-62a). In this regard, testimony of a charging party standing alone cannot amount to substantial evidence and the Third Circuit should have disregarded the administrative law judge's decision to credit the largely uncorroborated testimony of the discriminatee and discredit the testimony of all contrary witnesses. *NLRB v. American Art Industries, Inc., supra; NLRB v. Elias Brothers Big Boy, Inc.*, 327 F.2d 421 (6th Cir. 1964).

Accordingly, the decision in this case appears to place the Third Circuit in direct conflict with established precedent. Without this court's intervention, a confusing split in the circuits could unnecessarily evolve.

Similarly, the General Counsel's assertion that the timing and abruptness of Local 1357's actions against Ms. Murphy, namely the proximity in time between the strike and the onset of Ms. Murphy's discipline, further supports the Board's finding of unlawful motive is unfounded. The undisputed evidence established by the charging party's own testimony was that Local 1357 did not threaten, harass, discipline or in any other manner reprimand any of Ms. Murphy's fellow workers who participated in the strike either prior to, during, or subsequent to the walkout. (Appendix F, infra P.38a) Undisputed testimony also established that no actions with respect to Ms. Murphy took place until after the "heated meeting" of June 9, 1981 in which Ms. Murphy engaged in personal insults, threats and conduct which Mr. Young felt were insubordinate and humiliating (Appendix F, infra P.51-59a). This all clearly indicates that disciplinary action against Ms. Murphy was not prompted for retaliatory purposes due to Ms. Murphy's strike activity. The fact that the June 9 meeting which Ms. Murphy initiated occurred three weeks after the strike was just a coincidence and has absolutely no independent significance. General Counsel's attempt to attribute more to this coincidence than what really existed is simply misleading, especially since Ms. Murphy initated the encounter. Accordingly, the General Counsel's assertion that the timing and abruptness of Local 1357's action against Ms. Murphy further supports the Board's finding of unlawful motive is not supported by substantial evidence and General Counsel's reliance on *United Dairy Farmers Co-Op Ass'n. v. NLRB*, 633 F.2d 1054 (3d Cir. 1979), *NLRB v. Electric City Dyeing*, 178 F.2d 980 (3d Cir. 1950) is simply misplaced.

Finally, the General Counsel asserts that the Board's findings of unlawful motive are further supported by the failure of Local 1357's asserted reasons for discharge to withstand scrutiny. In an apparent attempt to prop up an already non-existent *prima facie* case on discriminatory motive, the administrative law judge attempts to do the work of the General Counsel and find discriminatory motives by relying on Board doctrines which hold that reliance on several shifting reasons for an action may give rise to an inference that the stated reasons are pretextural and mask another unlawful motive. Although this is a legally permissible approach to discrimination cases like the case at bar, the union's defenses were consistent throughout. Three major reasons, as cited by the Judge, supported the discharge of Ms. Murphy; namely, her false accusations against Mr. Young, the property destruction incident of June 10 and Ms. Murphy's refusal to submit to a psychiatric evaluation.

With respect to the final reason in support of the discharge, the union brought to the attention of the administrative law judge and established through competent testimony instances of Ms. Murphy's bizarre and erratic behavior which supported President Young's and Mr. Rosmini's decision that Ms. Murphy needed a psychiatric evaluation. For instance, Ms. Murphy's suggestion that the union President was promiscuously involved with two other women employed by Respondent, also the fact that she reported off sick for a period of six weeks and offered contradictory reasons concerning the nature of her alleged illness, and the union's apprehension that Ms. Murphy started a fire in the union's office were not specific grounds for discharge but did demonstrate the union's *good faith* in seeking the psychiatric evaluation as a possible alternative to having to discharge Ms. Murphy.

Consequently, it is clear that the administrative law judge incorrectly confused an argument in the union's

brief with respect to "major factors" which supported the union's decision to seek a psychiatric evaluation with the issue of what reasons supported "the discharge of Ms. Murphy." These are two entirely separate, though related, issues. The administrative law judge's confusion was incorrectly used by him to support an erroneous finding that the union engaged in "shifting defenses." To the contrary, the Respondent consistently claimed at the outset of this case and throughout formal proceedings in this matter that Ms. Murphy was discharged for reasons of insubordination relating to her conduct of June 10 and the other bizarre events she was involved in which indicated that she was in need of professional health care. Thus, there was no substantial evidence of "shifting defenses" upon which the administrative law judge could rely in finding a *prima facie* case of unlawful discrimination.

B. Substantial Evidence on the Record Considered as a Whole Indicates that the Grievant Was Fired for Permissible Reasons

It would seem clear that substantial evidence, on the record considered as a whole, indicates that the grievant would have been fired for permissible reasons. Local 1357 asserts that its every action eminated from Ms. Murphy's own bizarre misconduct, i.e., Ms. Murphy was ultimately discharged for reasons of insubordination relating to her conduct of June 10 and the other bizarre events she was involved in which indicated that she was in need of professional health care.

The administrative law judge ignored the firmly established evidence on the events surrounding Ms. Murphy's discharge and made credibility determinations in this regard which were inherently unreasonable or self-contradictory. Although established authority under *NLRB v. Crane, supra; NLRB v. Jacob E. Decker & Sons*, 569 F.2d 357 (5th Cir. 1978); *NLRB v. Randle-Eastern*

Ambulance Service, Inc., supra; NLRB v. National Fixture, Inc., supra indicates that this type of unreasonable or self-contradictory credibility determination should be ignored by a court of review, the Third Circuit in this case failed to follow this principle in crediting unreliable testimony which related to the events surrounding Ms. Murphy's discharge. Accordingly, the Third Circuit appears to be in direct conflict with established authority on this issue too. A focused review of the events surrounding the discharge will clearly bear this out.

For instance, the employer's actions against Ms. Murphy did not occur until subsequent to June 9, when she threatened and humiliated the Respondent's Chief Executive Officer during a conference in his office. In regard to this incident, the administrative law judge relies solely on Ms. Murphy's incredible version of the conversation and concludes that a heated argument ensued in which Ms. Murphy's arm was injured while being ousted from the office. (Appendix A, infra P.4a)

However, on this point, undisputed testimony on the physical details surrounding the alleged assault indicates that the attack never occurred. The place where Ms. Murphy was seated at the time of the alleged attack indicates that she could not have been reached (Appendix F, infra P.57-59a) Moreover, Mr. Young did indeed testify emphatically that he never laid a hand on Ms. Murphy and an actual rendition of Ms. Murphy's description of how the injury occurred and photographs of the alleged injuries indicate that the bruises suffered by Ms. Murphy did not result from the type of grabbing motion described by her (Appendix F, infra P.75-78a).

In contrast, the General Counsel fails to cite any physical evidence indicating that the assault did take place. In fact, its entire case is based on the grievant's self serving complaints of discomfort with her arm. Thus, it is clear that Respondent's President could not have physically attacked Ms. Murphy and the administrative law judge's determination to the contrary can be

disregarded as inherently unreasonable and contradictory.

In regard to the June 10 property destruction in Local 1357's office, the administrative law judge concluded that Local 1357 did not have a good faith belief that Ms. Murphy threw a tantrum and destroyed the office property despite the evidence to the contrary. (Appendix A, infra P.7-11a)

The administrative law judge's support for this conclusion is based on his claim that the investigation conducted by the Local was "perfunctory" and that the union falsely claimed that it believed the good faith statements of Messrs. Spellane and Miller or the first hand observation of Mr. Rosmini. (Appendix A, infra P.10a) However, this conclusion is also an unreasonable determination which can be disregarded.

For example, the Judge's conclusion that the investigation was "perfunctory" is unsupported. As of June 11, the union had completed a thorough investigation by taking statements from every employee who could offer relevant evidence. Although the grievant had not been interviewed as of that date, it was established that Mr. Young's attempts to set up a meeting during which the grievant could be questioned about the incident were frustrated by her absence on sick leave and her refusal to cooperate with her own union to arrange a meeting date. (Appendix F, infra P.60-61a and 72-73a) In fact, it must be noted that the administrative law judge does not point to one additional step that the union could have taken that was not, in fact, pursued. (Appendix A, infra P.10-11a)

In a similar vein, the Judge does not explain why he concluded that the union falsely claimed that it believed the statements of Spellane and Miller, nor why the union should not have truly believed these statements which were forthright, detailed and pointed the finger of guilt overwhelmingly in the grievant's direction.

The union cited in its brief additional reasons why it thought an evaluation was in order and each of the reasons stated were supported by the record. One such reason was the fact that Ms. Murphy chronically gave conflicting reasons for her sick leave during the time in which she was out of work. In fact, the grievant for a period of approximately six weeks reported off work and gave conflicting reasons for her absences including *inter alia*, alleged gastritis (Appendix F, infra P.47a), alleged heart trouble (Appendix F, infra P.64-66a), an alleged stomach tumor (Appendix F, infra P.62-72a) and other non-specific reports of illness in which Ms. Murphy simply claimed to be "very sick" or "very weak" (Appendix F, infra P.62-72a). It was during this time that the union received a report that Ms. Murphy had been admitted to JFK Memorial Hospital under the influence of alcohol and drugs (Appendix F, infra P.72a). Thus, the record clearly indicates that the grievant would have been fired for permissible reasons.

Accordingly, the Board's finding that the Respondent committed an unfair labor practice is based on inherently unreasonable credibility determinations. This in turn means that there is absolutely no support by substantial evidence on the record as a whole for the Third Circuit decision herein. Thus, the need for intervention by this court is urgent.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

MERANZE AND KATZ

BY:

BERNARD N. KATZ
BASIL L. MERENDA

DATED: February 4, 1986

CERTIFICATION OF SERVICE

I, BERNARD N. KATZ, ESQUIRE, do hereby certify that a true and correct copy of the attached Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit was forwarded by first class mail on this date to:

Elliott Moore, Esquire
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, DC 20570
Attn: John Welsh, Esquire

BERNARD N. KATZ

DATED: February 4, 1986

APPENDIX

APPENDIX "A"

JD-472-83
Philadelphia, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD
DIVISION OF JUDGES

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1357

and Case 4-CA-12427

ELIZABETH MURPHY, an Individual

Charles S. Strickler, Jr., Esq., for the
General Counsel.
*Richard B. Sigmond, Esq., (Meranze, Katz, Spear
& Wilderman)*, of Philadelphia, PA, for the
Respondent.

DECISION

Statement of the Case

MARION C. LADWIG, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, September 16-17, 1982. The charge was filed September 24, 1981,[1] and the complaint was issued February 10, 1982.

An SIU shop steward, representing office employees of a large local union, led an 11-day strike against the Union, to the embarrassment of its president. In a heated meeting after the strike with the steward concerning strike publicity, as credited evidence shows, the union president ejected her from his office, seizing her arm, badly bruising it. After she filed a claim alleging injury

1. All dates are in 1981 unless otherwise indicated.

from the assault, the Union suspended her, later required her to undergo a psychiatric evaluation as a condition of employment, and gave her a formal notice of termination when she refused.

The primary issues are whether the Union, the Respondent, (a) unlawfully issued the office employees' steward a warning letter, (b) threatened her with reprisals because of the strike, (c) made her working conditions more onerous as a reprisal, (d) required her to undergo a psychiatric and psychological examination as a condition of employment, to provide a pretext for discharging her, and (e) discharged her for engaging in protected concerted activity during and after the strike, in violation of Section 8(a) (1) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Union, I make the following

Findings of Fact

I. Jurisdiction

The Respondent Local 1357, an integral part of a multistate labor organization, is an unincorporated association in Philadelphia, Pennsylvania, where it annually receives over $100,000 in dues and fees, and remits over $25,000 to its International in Washington, D.C. The Union admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Alleged Unfair Labor Practices

A. *Embarrassing Strike Against Union*

Elizabeth "Betty" Murphy, who led the office employee strike against the Union from May 6 to 16, was a good employee and, as admitted by Union President

Wendell Young, a "very good shop steward" (Tr. 367). She was the telephone operator and receptionist, and did volunteer work as secretary and loan officer for the credit union.

She was a member of the Seafarers International Union's negotiating committee, which failed to reach an agreement with the Union without a strike. As the SIU strike captain, she conducted the picket line in front of the union offices, causing considerable disruption in the operations when the officers and business agents honored the picket line.

The strike was a personal embarrassment to President Young. A May 12 news story in the Philadelphia Daily News (G.C. Exh. 2), identifying Murphy as a picket captain and former nun, quoted her as stating that the major issues in the strike were overtime and a cost-of-living clause and that her boss, Wendell Young, was a hypocrite. "How can a man like him run around preaching about contracts and be so hypocritical?"

President Young admittedly was "very upset" with the "completely one-sided" news article (Tr. 360). He also revealed his displeasure "over the fact that there was a strike altogether." He testified that the "local fellows could not control the situation. In other words, they lost control. In fact, I had to go into the negotiations at the end, and try to sell the package instead of the union official doing it. That is how goofed up it was." (Tr. 375.) This was an obvious reference to the bargaining position of the SIU negotiating committee on which Steward Murphy served.

Acknowledging his embarrassment from the adverse publicity, President Young responded to the news story the same day, stating in a letter to the Daily News that "In our opinion, the people on strike are trying to embarrass us into a very unfair contract" (G.C. Exh. 3).

It was this response, which was printed in full in the June issue of the Union's newspaper, the Dialogue, that was the subject of Steward Murphy's heated meeting

with President Young on June 9 when, as Young admitted, she went to his office "to talk about union business" (Tr. 410).

B. *Assault Upon Shop Steward*

On June 9, 3 weeks after the office employee strike against the Union was settled, SIU Shop Steward Murphy saw in the Dialogue an article entitled, "The President Replies to Phila. Daily News," quoting President Young's May 12 response to that newspaper's strike story. At 4:15 p.m., she went to Young's office to give him the SIU position on the lack of accuracy of a statement in his response about one of the strike issues (Tr. 74-75, 175.) His statement was that "As a result of extensive days off and lost time due to these programs, over the past few years there has been an increasingly large amount of overtime needed to run the office."

As Murphy credibly testified, she told him she would like to talk to him about the article, he asked what was the problem, she handed him the newspaper, and he started reading the article. "It is in reference to this overtime. You say that our girls are getting overtime because they missed so much time during the year, but the truth of the matter is they are filling in for the secretaries who are never at their desks . . . and then they have to do their work at nighttime." (Tr. 33-34). She insisted on a retraction (Tr. 79). A heated argument ensued. (Murphy did not remember the full conversation.) Finally Young asked, "Are you telling me how to run this office?" She said, "No, Mr. Young, but I think you should print the truth." When asked what then happened, she credibly testified (Tr. 34)

> A. Mr. Young said "Get out of my office. Get out." He got up from his chair and he came around. I don't think I moved. Then *he grabbed my arm and I pulled away. He grabbed me again, and he pulled me toward the door.*

> He opened the door and he dropped my arm, and I left his office. *He threw me out of his office.* [Emphasis added.]

She returned to her desk "in terrible pain," spent 3 to 5 minutes closing (Tr. 77), clocked out at 4:32 p.m. (R. Exh. 1), and met two awaiting friends, one of whom drove her car (Tr. 35). Her left arm "felt like it was out of its socket" (Tr. 96). She was holding it and was "teary eyed" (Tr. 422). When asked what was wrong, she said, "He threw me out of his office." (Tr. 426.) The next morning when she showed one of the two friends (employee Sophia Cleary, the SIU shop steward for another group of the office employees) her "red and swollen" arm (Tr. 423), she explained, "He gripped my arm" (Tr. 427).

This was the day, June 10, when she came to work and found two of her pictures broken, as discussed below. With Secretary-Treasurer Rosmini's permission, she did little work that day and spent most of the time resting. At quitting time, Rosmini asked her if she was staying to do some credit union loans and, as she credibly testified, "I told him no, that I was having . . . a lot of pain with my arm, and I was going right home." (Tr. 38-39.) I discredit Rosmini's denial (Tr. 180) that Murphy complained about her arm at any time that day. (By his demeanor on the stand, he appeared more concerned about supporting the Union's cause on critical matters than giving an accurate account of what happened).

Rosmini permitted Murphy to rest much of the time during the next 2 days, Thursday and Friday, June 11 and 12. About 2:45 p.m. Friday, when she saw President Young, she told him, "Look at what you did to my arm." He looked at it and said, "I know. I know. See your union." (Tr. 44, 122.) Before leaving early that day (with permission from Secretary-Treasurer Rosmini to see a doctor about her arm (Tr. 128)), she told Rosmini, "I just showed Mr. Young my arm and he said he knew he

did it," to see her union. Rosmini asked, "Do you mean he admitted it?" and she suggested that Rosmini ask him. In his testimony, Rosmini admitted that he saw Murphy's arm; that it was "very black and blue" with "two large black and blue marks" and "four smaller marks on the other side of her arm"; that he told her "That doesn't look good . . . That looks terrible"; that he told her to talk to Young; and that when she returned, she said she had showed Young the black and blue marks and Young "admitted that he did it" (Tr. 188). I discredit Young's testimony that he merely told Murphy, "Come on, get out, go see your union" (Tr. 379). (Murphy impressed me most favorably by her demeanor on the stand as an honest, conscientious witness, but Young appeared to be less than candid.)

That Friday afternoon, upon the suggestion of an attorney, Murphy had four color photographs taken of her injured arm, graphically recording the condition of the arm as described by Rosmini.

The Union took the position at the beginning of the trial that Young "never laid a hand on her" (Tr. 20). After the photographs were introduced into evidence (G.C. Exh. 6), Secretary-Treasurer Rosmini testified that he had no information how Murphy's arm was injured and admitted having no reason to believe that the bruises were self-inflicted (Tr. 277-278). Young continued to deny touching her.

I reject as frivolous the suggestion in the Union's brief that there is "a reasonable probability that Ms. Murphy self-inflicted these bruises while rubbing her arm after leaving Mr. Young's office or at some other time, in some other way." In arguing that Young's grabbing her arm as Murphy described would not leave two large bruises on the front of the arm, the Union ignores the credited testimony that Young gripped her arm twice.

After weighing all the evidence and discrediting President Young's denials, I find that Young injured SIU

Steward Murphy's arm June 9 when ejecting her from his office.

C. *Destruction of Steward's Personal Property*

On Wednesday, June 10, Steward Murphy received another shock that added to the trauma of the assault of the afternoon before.

She arrived about 8:30 and office boy Thomas Spellane opened the door for her. After clocking in at 8:32 (R. Exh. 1), she went to her desk and found the pictures of her mother and her friend, Sister Gloria Keltz, lying on the floor with the frames broken. She was "most upset" (Tr. 37) and "kind of in total shock" (Tr. 98) upon seeing "the glass all over the floor" and the broken pictures. She turned and walked out, and asked Spellane for Secretary-Treasurer Rosmini's telephone number. Rosmini had already left home.

As other employees arrived, Spellane opened the door and let them in. The next employees to arrive were Renee Kelly and Margaret O' Brien, followed by Sophia Cleary, who arived about 8:35, and Kathy Barrett, who arrived a minute or so later (Tr. 420, 429-430).

As Kelly and O'Brien entered the reception area, they noticed that the clock on the wall was also broken and Murphy's small Irish flag was burned. One of them commented, "Your flag is burned, too, Betty, and so is the clock" broken. (Tr. 38.) As Murphy credibly testified, "it was the pictures that were on my mind, my mother's picture and Sister's picture"; I didn't know [the clock] was broken . . . I didn't examine it . . . . I think part of [the flag] was burned. I didn't examine it that well, because I was very upset about the whole episode" (Tr. 101). She did notice that the wall clock had stopped at 11 p.m. (Tr. 38).

When employees Cleary and Barrett came to the area, as Cleary credibly testified, "The first thing that I observed was the clock up on the wall stopped at 11:00.

. . . And I turned to Kathy Barrett and said, 'It happened at nighttime.' She said, 'It would have had to' " (Tr. 421, 431).

When Secretary-Treasurer Rosmini arrived about 9:05 or 9:10, he saw Murphy standing at her desk, crying. "She told me that someone had brokenSister Gloria's picture and her mother's picture." (Tr. 176.) He cleaned up the glass and told Murphy to get some tea and relax (Tr. 103).

It was at quitting time that day (after Murphy told Rosmini she was having a lot of pain with her arm and was going right home) when Rosmini told her to stop in his office and, as discussed below, gave her a warning letter for "insubordination or belligerent behavior" and told her, in an apparently unguarded answer to a question, that President Young "said he was going to make an example of you, that nobody would ever strike against him again."

The next day, Thursday, June 11, upon instructions from Young, Rosmini made a perfunctory investigation, taking two statements. (A third employee also gave a statement to Young's secretary, professing to report what the office boy had told him.) The statement that Rosmini took from office boy Spellane (R. Exh. 5) was obviously inaccurate. The statement claimed that Spellane "went upstairs at 8:15 to make the coffee and the bell rang. Betty Murphy came in. Approximately 8:30 I went down to wait for the people to come in." Although Rosmini never accused Murphy of destroying her own property and never took a statement from her or any of the other employees who discovered the damage, the Union could argue from this purported timing that Murphy had 15 minutes to smash the pictures of her own mother and her nun friend, to set fire to the flag (ignoring the odor from the smoke) and, after damaging the wall clock, to have the presence of mind of somehow reaching the 7-foot-high clock on the wall (Tr. 283) and setting it forward or back several hours. (Except for President

Young's dubious suspicion — that the flag burning and destruction of property were "to throw the thing off," or distract attention from Murphy's June 9 conduct in his office (Tr. 377) — nowhere in the evidence is there any suggestion of a motivation for her to damage the clock and destroy her own valued property.)

Spellane's statement also asserted: "In the meantime, I came in and she said, 'Look at all this.' There was glass on the floor and the clock said 11 something on it. I took notice the clock was *on the wall.*" (Emphasis added.)

The timing was obviously wrong, because Murphy's timecard showed that she clocked in at 8:32 a.m. — not 15 minutes earlier. By the time of trial, the timing was changed; Spellane testified that he went downstairs "around 8:30" and let Murphy in the front door (Tr. 308). (This corrected timing, however, made it even more unlikely that Murphy would be setting a fire at her desk, breaking pictures and scattering glass around, and breaking and resetting a clock in the few minutes before the other office employees arrived. As found above, Cleary arrived about 8:35 — about 5 minutes after Murphy — and both Kelly and O'Brien arrived ahead of Cleary.)

Also by the time of trial, Spellane had changed another part of his story. Although asserting in his written statement (which was witnessed by Secretary-Treasurer Rosmini) that the damaged clock was on the wall, he claimed at the trial that "The clock was on the floor" (Tr. 310). Rosmini also claimed that the clock was on the floor (Tr. 176). To the contrary, Murphy and Cleary both credibly testified that the clock was on the wall when the damage was discovered. (The Union contends in its brief: "The clock sits seven feet off the floor on the wall of the reception area. . . . She intentionally damaged her own property, for what reason we can never be sure, and apparently pulled the clock down off the wall and set it at 11:00 o'clock for obvious reasons.") I find that

Spellane and Rosmini fabricated the change in testimony to support the Union's cause—placing the damaged clock in a more accessible place for Murphy to reset it. (Rosmini claimed, "I concluded that [between 8:30 and 9 o'clock] the clock was moved forward [by Murphy] to indicate it was done the night before" (Tr. 272-273), but testified he did not know how to change the time: "Move the hands, I guess" (Tr. 283).

Because of (a) the obviously inaccurate timing of Murphy's arrival in Spellane's statement, (b) the lack of any plausible motivation for Murphy to destroy or damage her own and the Union's property, (c) the implausibility of Murphy's setting a fire at the reception desk, destroying valued property, and damaging and resetting a wall clock at the beginning of the workday as other employees were arriving, and (d) the failure of the Union to question Murphy and other employees who discovered the damage, I deem it most unlikely that the Union actually believed two other assertions in Spellane's statement, that "the clock said 10 minutes of 8" and "nothing was disturbed" when he opened the building that morning. (At the trial, Spellane first admitted that he would have to turn his head "almost all around to see the clock" upon entering the front door, and indicated how far he would have to turn, but later indicated he would have to turn only about 90 degrees to the left (Tr. 313-315). He appeared to be less than candid.) Whether or not it was Spellane's own idea to include these assertions in the typed statement (witnessed by Rosmini and President Young's secretary, Janice Pinti), I find that the Union falsely claimed that it believed the assertions.

I find instead that President Young ordered the perfunctory investigation to discover some pretext for discharging the SIU steward, as discussed below. I discredit Rosmini's claim that he planned to "meet with Ms. Murphy and to discuss [the incident and the statements taken in the investigation] with her," but that he never had the occasion (Tr. 227). He later testified that

"As far as we are concerned, we had all the information we needed on the June 10th incident" (Tr. 242). Young, after testifying that he ordered the investigation, claimed that "without any evidence at this point. . . . I thought Betty did it herself" (Tr. 375).

The evidence does not reveal who damaged the union and personal property. The damage was not done when the office was cleaned between 8 and 8:30 the evening before, and the night porter was not aware of anyone else being in the building between then and midnight, when he left the building (R. Exh. 4, Tr. 328). President Young testified: "I thought Betty did it herself . . . Because I know I did not do it. . . . I know that it was not me. And I know that I did not instruct anybody to do some stupid childish thing like that . . . . I did not burn her flag, or instruct anybody to do it. (Tr. 375, 393-394, 412.)

Contrary to the Union's contention in its brief that the evidence is "overwhelming" that Murphy "committed the damage herself," I find both that she did not do the damage and that the Union did not in good faith believe that she did when discharging her.

D. *Alleged Coercion Against Steward*

1. Written warning and threat of reprisal

At quitting time Wednesday, June 10, Secretary-Treasurer Rosmini called Murphy to his office and gave her a warning letter signed by President Young (G.C. Exh. 4), notifying her that "any further display of insubordination or belligerent behavior . . . such as you exhibited in my office on June 9, 1981, will result in suspension and/or discharge." She first asked Rosmini what Young meant by "insubordination," and he replied that he did not know. Then, as she credibly testified (Tr. 40-41),

> A. I said "What seems to be Mr. Young's problem? Has he said anything to you?" And he said Mr. Young said he was going to make an example of you, that nobody would ever strike against him again.

Rosmini did not specifically deny telling her this. He claimed that when she asked how she was insubordinate, he explained that she failed to follow Young's instructions by not leaving his office and was "loud and boisterous" (Tr. 180).

The evidence is clear that President Young and Steward Murphy had a heated argument June 9 in Young's office, and that she insisted on a retraction of his strike publicity statement that the office employees were "getting overtime because they missed so much time during the year." As found above, she credibly testified that when he asked, "Are you telling me how to run his office?" she said, "No, Mr. Young, but I think you should print the truth." (That was when he ordered her out and pulled her arm, injuring it.) The evidence is also clear that she was in the office longer than the 5 minutes she recalled and that she did not remember the full conversation.

I credit part of Young's testimony about what occurred. He testified that Murphy stated she felt the published letter "was against the understanding that we had after the strike [the amnesty clause attached to the agreement], that there would be no retaliation." He gave her a long explanation about why his strike publicity letter was printed in the Union's newspaper after the strike was settled. "And she did not even listen. She just kept looking up in the air . . . staring at the ceiling." (Tr. 359). (This testimony tends to account for her failure to recall part of the conversation.)

I find, however, that his denials that he even touched her and his claim that she referred to his morality in the June 9 meeting were fabricated. According

to the Union's brief, she suggested "that the Union President was promiscuously involved with two other women employed by respondent," by making a remark that Young interpreted "as a suggestion that he was having sexual relations with these female employees," and that she made another remark that Young interpreted "as a threat by Ms. Murphy to call his wife and tell her that he was having an illicit affair with Pat Scarcelli and Jackie McPeak." The brief argues that this and other conduct were "so provocative and improper as to clearly warrant her dismissal." Yet the warning letter the next day mentioned only her purported "insubordination or belligerent behavior." Even if Secretary-Treasurer Rosmini's testimony were credited that on June 10, Rosmini gave Murphy an explanation of the warning letter, he merely claimed that he told her she "failed to follow instructions by not leaving [Young's] office, and that she was acting *loud and boisterous*" (Tr. 180, emphasis added). (The Union's brief misstates the record in contending that Rosmini referred to her loud and "abusive" conduct toward Young.) Although some of Young's testimony was corroborated by his secretary, Janice Pinti (who witnessed office boy Spellane's inaccurate statement about the June 10 property destruction), she did not impress me as being a credible witness.

Moreover, even assuming that in their June 9 meeting on union business, Steward Murphy made the statements that President Young claimed, I find that the statements would not have been so opprobrious to be unprotected. According to him, she stated that "the only people that you listen to are Pat Scarrelli and Jackie McPeak . . . . You hate me because I am Irish . . . . Is your wife going to be home tonight?" (Tr. 361-362.) (Although Murphy could not remember the entire conversation, she positively and credibly denied making these statements (Tr. 85-86.)

I note that in falsely denying that he even touched Murphy (contrary to her credited testimony that he

gripped her arm twice), he gave testimony that undermined his claim that she was insubordinate by failing to follow instructions to leave the office. He testified (Tr. 362)

> I said, ". . . Come on, get out of the office, go see your union. We are finished with this conversation."
>
> I opened the door, and I asked her to leave. And she got up and left. I did not touch her. And that whole thing is absolutely ludicrous, those pictures [of her bruised arm], absolutely ludicrous.

The Union contends in its brief that "Even if this conversation is deemed to have involved protected activity, Ms. Murphy's conduct during that meeting far exceeded any reasonable bounds of propriety. When she did not succeed in her demand for a retraction, she berated and humiliated Mr. Young, suggested that he had a sexual liaison with two other employees, and made a statement that was interpreted clearly as a threat to call his wife and relay that false accusation. Under these circumstances, Mr. Young was justified in issuing the letter of reprimand . . . Indeed, he would have been justified, under the circumstances, in meting out a much harsher form of discipline." The Union brief does not reveal, if these were true facts, why this defense was reserved for the trial and not even alluded to at the time.

I find that Secretary-Treasurer Rosmini's June 10 statement to Steward Murphy that President Young "said he was going to make an example of you, that nobody would ever strike against him again" was a threat of reprisals for engaging in the protected concerted strike activity and violated Section 8(a)(1) of the Act.

In view of this finding and the above finding that the defense that Steward Murphy "berated and humilitated" the union president was fabricated, I reject the argument in the Union's brief that the June 10 warning letter "obviously had nothing whatsoever to do with the strike"

and find that it was a reprisal for her leading the strike against the Union and for her engaging in protected concerted activity in the discussion of union business with President Young in the June 9 meeting, in violation of Section 8(a)(1).

2. More onerous working conditions

On June 11, the day after Steward Murphy received the warning letter, Organizing Director Hugo McKissic wrote an interoffice communication to secretary Renee Kelly, informing her that she was not to relieve anyone on the switchboard or in any other area "unless you get my personal approval." On June 12, Murphy, as shop steward, received a copy of the communication.

The complaint alleges that the Union, through McKissic, made telephone operator Murphy's working conditions more onerous "by refusing to permit other employees temporarily to relieve her from her duties."

McKissic, however, credibly testified that neither President Young nor Secretary-Treasurer Rosmini was aware that he was sending the communication and that it had no relationship to the June 9 and 10 incidents. I therefore agree with the Union that the communication was not issued in retaliation for Murphy's union activities and that the timing was purely coincidental.

Accordingly, I find that the allegation must be dismissed.

E. *Discharge of Office Employees' Steward*

1. Her claims for compensation

On Friday, June 12, Steward Murphy began taking treatments for her arm. On June 15, with Secretary-Treasurer Rosmini's permission, she began taking sick leave (without pay). She took treatments about every other day (Tr. 46), and she was taking "a lot of Anacin" for the pain (Tr. 288). Toward the end of

June, she began having stomach and other problems. She finally received a doctor's release dated July 20, stating that she was permitted to return to work July 27 on a full-time basis. Rosmini admitted that he had a conversation with her at least once a week (Tr. 234).

On June 22, one of Murphy's friends, Sister Gloria, handed Rosmini Murphy's workmen's compensation claim form that stated that Murphy was injured while meeting with President Young in his office (Tr. 135, 192). Murphy overheard Rosmini state, "I can't sign these. Wendell [Young] would never agree with it" (Tr. 133). According to Rosmini, he said "we" did not agree that Murphy was injured in Young's office, but said he told sister Gloria that he would mail the claim to the carrier if the doctor filled out his part (Tr. 192). He admittedly advised that Murphy was entitled to file a claim on the health and welfare fund, which provides compensation for "two-thirds of pay" (Tr. 196).

On June 26, Rosmini sent Murphy some health and welfare fund forms. She submitted a disability claim that same day for "Personal injury sustained [June 9] while on the job in the President's Office" (G.C. Exh. 14). On July 2, the claims supervisor, with a copy to President Young, rejected the claim because it was work related (G.C. Exh. 13).

About August 18 (Tr. 195, 232), Steward Murphy again submitted a workmen's compensation claim form, which Rosmini this time sent in. On the form Murphy made the following assertions (G.C. Exh. 15):

> During conversation with [Pres.] Young, he became angry and gripped me by the arm, physically ejecting me from his office.
>
> . . . .
>
> Arm pulled out of socket affecting chest cavity.
>
> . . . .
>
> There has been great bitterness against me as shop steward in Seafarers International Union since a

> strike was launched against Mr. Young's Local last May 9, 1981 when our contract expired. The media attention it gained was a great embarrassment to him and our conversation that day was concerning a newspaper article he sent to the Daily News [and printed in the] Dialogue.

Thus, in all three claims—her June 22 workmen's compensation claim (which Secretary-Treasurer Rosmini refused to send in), her June 26 disability claim, and her August 18 workmen's compensation claim (which she submitted shortly before her August 21 formal notice of termination)—she asserted that her injury was sustained on the job, in President Young's office.

Young was most concerned about this assertion (which I find to be truth). He testified (Tr. 385)

> A. One of the problems that we were having is what Betty was going to put on that form. . . . we told . . . the [SIU] . . . if she put on the form that I touched her . . . I was going to sue her, absolutely sue her.
>
> And I let that be known. And that is why we did not get any forms for a while. . . . she knew that I was waiting for that report to come in. And I was immediately going to go down and sue her for that incident.
>
> But we did not get a form. I called down to health and welfare. . . . and said all I want to do is review what she puts down for her sickness.

He was referring to the disability claim that she submitted June 26, asserting "Personal injury sustained while on the job in the President's office." He did not sue her but, according to the General Counsel, he in effect discharged her July 14, when he refused to let her work (although the formal notice of termination was not given her until August 21).

2. Her suspension and notice of termination

On Monday, July 13, when Steward Murphy made her usual Monday morning telephone call to Secretary-Treasurer Rosmini to report her continued doctor's treatment, Rosmini told her (as she credibly testified), "Mr. Young said as soon as you are better — as soon as you get better, Betty, that you are fired" (Tr. 49, 139-140). According to Rosmini, he told her "she was going to be suspended" (Tr. 205).

The next day, July 14, in an apparent effort to retain her job, she reported to work despite her feeling "really sick" (Tr. 144). She clocked in, opened the switchboard, and started to work. About 9:15, President Young called in, recognized her voice, and told her, "Get off the board, Betty, and do what you are supposed to be doing" (Tr. 49). She left the board, went upstairs, and waited for Rosmini. When asked "what was I supposed to be doing," Rosmini "shook his shoulders" and later told her, "Get yourself well, Betty, get strong, and get a release from the doctor" (Tr. 50).

On July 27, Murphy returned to work with a doctor's release that read: "Ms. Betty Murphy is permitted to return to work on July 27, 1981, on a full-time basis. Ms. Murphy will be treated at our facilities during our evening hours" (G.C. Exh. 7). Rosmini directed her not to clock in and, after conferring with President Young (Tr. 211), gave her a letter stating "please be advised that you are being held out of service until we complete the appropriate investigation. Your recent absences and the facts and allegations surrounding them have raised certain serious questions which indicate that there may be reason requiring further action on our part" (G.C. Exh. 8). He admittedly refused to give her any explanation (Tr. 212).

On August 4, Rosmini sent Murphy a letter, advising her of an appointment on August 12 with a psychiatrist and a consulting psychologist. The letter explained (G.C. Exh. 9)

> A thorough consideration of all of the facts has convinced us that in order to make a responsible and informed decision [concerning her future employment], it will be necessary for us to receive a full psychiatric and psychological evaluation. This step is necessary for us to be advised whether there are mental health problems which would dictate that the resolution of your employment question be dealt with in that sphere.

On August 6, Rosmini wrote Murphy another letter, stating that the appointment was postponed until August 19. She contacted her union, which advised her to completely ignore the letters (Tr. 153). Instead, she telephoned the psychiatrist and told him she did not want to waste his time or the Local's money. Then on August 11, Rosmini wrote Murphy another letter, advising her that the appointment was not for treatment. "It is solely for the purpose of guiding us in determining what the appropriate action should be in response to your past conduct. You are obliged to keep the appointment." The letter warned, "A failure to do so will be dealt with as a deliberate and willful disregard of orders and intentional insubordination." (G.C. Exh. 11.) The SIU again advised their steward to ignore the letters, and she did, missing the appointment.

About August 18, as indicated above, Murphy submitted her workmen's compensation claim to the Union, asserting that President Young "became angry and gripped me by the arm, physically ejecting me from his office." On August 21, Rosmini sent her the formal notice of termination, explaining (G.C. Exh. 12)

> You were specifically instructed to appear for an examination on Wednesday, August 19, 1981. You were warned that a failure to appear would result in disciplinary action. Despite this warning, you did not appear and this offense coupled to all attendant circumstances presents just cause for discharge.

3. Shifting defenses

Secretary-Treasurer Rosmini, Steward Murphy's immediate supervisor who signed her August 21 termination notice, positively testified at the trial that there were three and only three reasons for her discharge. He listed them as "insubordination" (failure to appear for the psychiatric examination), her "conduct of June 10th" (burning the flag and destroying other property), and "making slanderous statements about Mr. Young" (claiming, and stating on her August 18 workmen's compensation form, that the union president on June 9 injured her arm). (Tr. 262-264.)

President Young, the Union's chief executive officer for 20 years, stated that he made the final decision to discharge Murphy (Tr. 353). He testified that his "initial reaction was to dismiss her because of that [June 10 flag-burning] incident" (Tr. 413), that he "spent almost literally the gosh damn summer, at least an hour or so a day, discussing this damn Betty Murphy situation" (Tr. 394), that the major reasons they had decided to hold her out of service were the June 10 flag burning and the accusation that he had injured her arm (Tr. 405), and that when Murphy did not make the psychiatric appointment, "that was the final straw that broke the camel's back. We notified her that she was dismissed." (Tr. 396).

Thus at the trial, Rosmini claimed that the accusation against Young, the June 10 incident, and the refusal of psychiatric examination were the sole reasons, and Young claimed they were the primary reasons, for Murphy's discharge. Young specifically denied that her

discharge had "anything at all to do with her functioning as shop steward" (Tr. 354). Both Rosmini and Young claimed that the decision to discharge her was not made until after she refused the psychiatric examination, but admitted that they had previously decided not to let her return to work until their "investigation" was completed.

In light of the evidence at the trial, however, these three purported reasons for the discharge were obviously suspect. One claim was that the Union was discharging the office employee shop steward for asserting that the union president injured her arm when ejecting her from his office, despite the evidence that her assertion was true. Another claim was that the Union believed, after a perfunctory investigation, that the steward herself burned her own flag and smashed two of her own valued pictures at starting time, despite the evidence indicating that the Union did not in good faith have that belief. The third claim was that the Union discharged the SIU steward for insubordination when she refused to obey a demeaning order to take a psychiatric examination for a possible mental problem — which the Union contended it suspected that she had primarily because she asserted (truthfully, as found above) that the union president injured her arm and because she destroyed her own property (something, as found, she did not do).

In its brief, the Union listed other purported "major factors" involved in the Union's ultimate decision to terminate Murphy's employment (as well as its decision to seek a psychiatric evaluation). The first two were purported reasons that neither Rosmini nor Young claimed as a basis for the discharge. They were Murphy's "suggesting that the Union President was promiscuously involved with two other women employed by respondent" (found above to be a fabrication) and her "threatening to call the Union President's wife to report on the alleged illicit affairs if the Union President did not accede to Ms. Murphy's demands for a retraction of a newspaper article" (also found to be a fabrication).

Some of the other purported "major factors," contended in the brief but not claimed by either Rosmini or Young to be a basis for the discharge, were "blaming the mischief [destroying property June 10] on unspecified 'others' in the Union office" (something she did not do); reporting to work on three consecutive days [June 10-12] and spending most of her time in the office lying on a couch in the ladies' lounge" (failing to point out that she did so with Rosmini's permission); and "reporting off sick for a period of six weeks and offering contradictory reasons concerning the nature of her alleged illness" (a clear pretext).

I find that these shifting defenses — particularly the first two purported "major factors" — detract from rather than bolster the Union's defense that it was lawfully motivated.

4. Concluding findings on discharge

After weighing all the evidence, I find that this is a bizarre case in which a local union president, seeking a mechanism to discharge a suspended office employee shop steward for her protected concerted activity, ordered her to submit to a psychiatric evaluation as a condition of employment and discharged her when she refused to comply with the demeaning order.

In its brief, the Union contends that it could have discharged SIU Shop Steward Murphy "immediately after the June 10 property destruction incident" and could have discharged her "following the false accusation against [President] Young," but that "she was a long-term employee, a virtual fixture in the office," and although she had engaged in this "serious misconduct," the Union deciced it "should first attempt to determine whether her problem was due to emotional or mental distress' by requiring her to take the psychiatric evaluation.

To the contrary, as found, Murphy did not engage in the June 10 property destruction, the Union did not have a good-faith belief that she did and, in fact, ordered the perfunctory investigation to discover some pretext for discharging the SIU steward who had embarrassed President Young by her protected concerted strike activity. Also, as found, Murphy's accusation against Young was true; he had injured her arm in the June 9 meeting when she, as shop steward, was engaging in protected concerted activity.

I agree with the General Counsel that before July 14, when President Young suspended Murphy from work by ordering her off the switchboard, the Union had already decided to terminate her "and was only attempting by further investigation and delay to find some basis or mechanism — the psychiatric evaluation — to achieve this end."

I therefore reject the Union's contention that "Not one action taken against [SIU Shop Steward Murphy] had any relationship to her functioning as shop steward or her participating in the strike," and its contention that even if President Young acted in "retaliation for her strike activities . . . a discharge would have been proper, and occurred, even absent such a hostile motivation." I find that the Union unlawfully discharged her for engaging in protected concerted activity during and after the strike in violation of Section 8(a)(1) of the Act and that, as alleged in the complaint, she was in fact discharged July 14, after which the Union refused to permit her to work. (I find it unnecessary to rule whether the discharge also violated Section 8(a)(3).)

I also find that the Union required Shop Steward Murphy to undergo a psychiatric and psychological examination August 19 as a condition of employment, to provide a pretext to discharge her for engaging in protected concerted activity, further violating Section 8(a)(1).

Conclusions of Law

1. By discharging Elizabeth Murphy July 14, 1981, for engaging in protected concerted activity, the Union engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By issuing SIU Shop Steward Murphy a warning letter in reprisal for her engaging in protected concerted activity, the Union violated Section 8(a)(1).

3. By threatening the shop steward with reprisals for engaging in protected concerted strike activity, the Union violated Section 8(a)(1).

4. By requiring the shop steward to undergo a psychiatric and psychological examination as a condition of employment, to provide a pretext to discharge the shop steward, the Union further violated Section 8(a)(1).

5. The Union did not make the shop steward's working conditions more onerous in reprisal for her protected concerted activity.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully discharged an employee, must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NRLB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977).

On these findings of fact and conclusions of law and on the entire record, I issue the following[2]

ORDER

The Respondent, United Food and Commercial Workers International Union, Local 1357, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discharging or disciplining any employee for engaging in protected concerted activity.

(b) Issuing any employee a warning letter in reprisal for engaging in protected concerted activity.

(c) Threatening any employee with reprisals for engaging in protected concerted strike activity.

(d) Requiring any employee to undergo a psychiatric or psychological examination as a condition of employment, to provide a pretext for discharging the employee.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Elizabeth Murphy immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her

2. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

whole for any loss of earnings and other benefits suffered as a result of her discharge, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and to the June 10, 1981 warning letter and notify the employee in writing that this has been done and that the discharge and warning letter will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its union offices in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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3. If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. October 27, 1983

Marion C. Ladwig
Administrative Law Judge

APPENDIX "B"

DZH

273 NLRB No. 44 D—2447
Philadelphia, PA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1357

and Case 4—CA—12427

ELIZABETH MURPHY, an Individual

DECISION AND ORDER

On 27 October 1983 Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1]

1. The Respondent excepts to the exclusion of a hospital record it sought to admit as evidence that Murphy sought medical treatment on 10 July 1981 for intoxication. The Respondent contends that this record is relevant to the charge that it unlawfully required Murphy on 4 August 1981 to undergo a psychiatric evaluation. We find that the preoffered evidence is irrelevant and that the Respondent was not prejudiced by its exclusion. The issue is not the fact of Murphy's hospital visit but the Respondent's motivation in requiring the psychiatric evaluation. On this issue the Respondent was not precluded from presenting evidence. The judge permitted the Respondent's President Young to testify that he had heard of Murphy's hospital visit before 4 August and that it was a motivating factor in the decision to require her to take the psychiatric examination.

findings,[2] and conclusions as restated below, and to adopt the recommended Order as modified.

In adopting the judge's finding that the Respondent Union reprimanded Murphy, required her to take a psychiatric examination, and ultimately discharged her in reprisal for her activity in support of a May 1981 strike against the Respondent, we note the prominent and outspoken role that Murphy played during that strike. A shop steward for the Respondent's office employees, Murphy was a leader of the strike and conducted the picket line in front of the Respondent's offices. She was also quoted in the local newspaper accusing the Respondent Union's President, Wendell Young, of being a hypocrite for not meeting the employees' contract demands. Additionally, the judge credited Murphy's testimony that after the strike, the Respondent's secretary-treasurer told her that President Young "said he was going to make an example of you, that nobody would ever strike against him again." Based on these findings, we agree with the

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2. The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We have further considered the Respondent's contention that the judge has evidenced bias or at least the appearance of bias in this proceeding. We have carefully considered the decision and record and find these charges unsupported and without merit.

The judge found it unnecessary to rule whether the Respondent's actions against Murphy also violated Sec. 8(a)(3) of the Act. The General Counsel contends that the judge's findings are clearly sufficient to conclude that the Respondent violated that section. We agree and find that the Respondent's actions against Murphy discouraged union activity in violation of Sec. 8(a)(3) of the Act. See *Radio Officers v. NLRB*, 347 U.S. 17 (1954).

judge's conclusion that the Respondent's subsequent actions against Murphy were in retaliation for her protected strike activity in violation of Section 8(a)(1) of the Act.[3]

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3. The judge found that the Respondent's actions against Murphy also violated Sec. 8(a)(1) insofar as they were also in reprisal for Murphy's protest to Young after the strike was settled over an article he had written concerning the strike. The judge found that Murphy's protest concerned union business and was therefore protected concerted activity.

Chairman Dotson and Member Hunter do not adopt this finding for the following reasons. Chairman Dotson would reverse the judge's finding. In the Chairman's view, because Murphy sought only the retraction of the article and not any change in terms and conditions of employment, her protest over the article was not protected activity. See *Phase Inc.*, 263 NLRB 1168, 1170 (1982); *Champion Parts Rebuilders*, 260 NLRB 731 fn. 3 (1982). Member Hunter finds it unnecessary to pass on whether Murphy's protest over Young's article was protected concerted activity. Insofar as the judge found that the Respondent's defense that Murphy was insubordinate and threatened and humiliated Young during their discussion was a fabrication, Member Hunter would find that it was solely Murphy's protected strike activity which motivated the Respondent to reprimand and ultimately discharge her. Thus, in Member Hunter's view, the Respondent's reliance on Murphy's protest as justification for her discharge was, likely Murphy's refusal to take a psychiatric examination, simply another pretext for discharging her in retaliation for her protected strike activity.

Accordingly, the judge's Conclusions of Law and recommended Order are amended to reflect the Chairman's and Member Hunter's findings that the Respondent's actions against Murphy were due solely to her protected strike activity.

The judge also stated in dictum that even if Murphy had threatened during their discussion to tell Young's wife that he was having affairs with two of the female office employees, this threat "would not have been so opprobrius to be unprotected." Chairman Dotson does not adopt this dictum. In the chairman's view, a threat to disclose private sexual affairs, in the circumstances here, exceeds the bounds of protected conduct. C.f. *Bell Federal Savings & Loan Assn.*, 214 NLRB 75 (1974) (disclosing employer's private telephone calls unprotected). In view of the judge's finding that Murphy did not in fact make such a threat, Member Hunter finds it unnecessary to pass on the judge's dictum.

Conclusions of Law

1. By discharging Elizabeth Murphy on 14 July 1981 for engaging in protected concerted strike activity, the Respondent engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and (3) of the Act.

2. By issuing Murphy a warning letter in reprisal for her engaging in protected concerted strike activity, the Respondent violated Section 8(a)(1) and (3) of the Act.

3. By threatening Murphy with reprisals for engaging in protected concerted strike activity, the Respondent violated Section 8(a)(1) of the Act.

4. By requiring Murphy to undergo a psychiatric and psychological examination as a condition of employment to provide a pretext to discharge her, the Respondent violated Section 8(a)(1) and (3) of the Act.

5. The Respondent's aforesaid actions are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent did not make Murphy's working conditions more onerous in reprisal for her protected concerted strike activity.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United Food and Commercial Workers International Union, Local 1357, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute in paragraph 1(a) the words "protected concerted strike activity" for the words "protected concerted activity."

Member Zimmerman agrees with the judge's analysis of Murphy's actions concerning Young's article and adopts his findings in all respects.

2. Substitute in paragraph 1(b) the words "protected concerted strike activity" for the words "protected concerted activity."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C.

14 December 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 85-3152

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1357,

Respondent

(Board Docket No. 4-CA-12427)

ON APPLICATION FOR ENFORCEMENT AND
CROSS-APPLICATION
FOR REVIEW OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Submitted Under Third Circuit Rule 12(6)
November 4, 1985

BEFORE: SEITZ, WEIS and ROSENN, *Circuit Judges*.

JUDGMENT ORDER

After consideration of all contentions raised by petitioner and respondent, it is

ADJUDGED AND ORDERED that the application for enforcement of an order of the National Labor Relations Board be and is hereby granted and the respondent's cross-application for review of the order is denied.

Costs taxed against respondent.

By the Court,

_____

ATTEST:

_____

Sally Mrvos, Clerk

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 85-3152

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1357,
Respondent

(Board Docket No. 4-CA-12427)

SUR PETITION FOR REHEARING

PRESENT: ALDISERT, *Chief Judge*, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, and ROSENN, *Circuit Judges*.

The petition for rehearing filed by respondent in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

_____
Circuit Judge

Dated: Dec. 4, 1985

APPENDIX "E"

Statutory Provisions

LABOR MANAGEMENT RELATIONS ACT OF 1947, AS AMENDED, (29 U.S.C.A. §151, et seq.)

§157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.
July 5, 1953, c.372 §7, 49 Stat. 452; June 23, 1947, c.120, Title I, §101, 61 Stat. 140.

§158. Unfair labor practices

(A) It shall be an unfair labor practice for an employer —

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

. . . . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: **Provided,** That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined

in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: **Provided further,** That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

APPENDIX "F"

RELEVANT TESTIMONY

employee at the Local Union, Renee Kelly, was informed that she was no longer to relieve Betty Murphy in her duties on a temporary basis.

I would note that Ms. Murphy worked as the Receptionist and in the past had been relieved from time to time by Ms. Kelly. On the 12th of June, Ms. Murphy left work to seek medical care of her arm, which had been injured when she was removed from Mr. Young's office.

Ms. Murphy had a number of communications with the Local Union subsequent to June 12, on which she informed them of her health condition, and the fact that she was receiving treatments and was informed that she was excused from work until she was well enough to work.

On July 14th, Ms. Murphy did return to work and was told she was to leave work, was not permitted to work. On the 27th of July, Ms. Murphy again returned to work with a doctor's certificate, indicating she was well enough to work, and she was given a communication — a written communication — at that time, indicating that she was being held out of service pending investigation.

Ms.Murphy inquired as to the meaning of the term "held out of service" but did not receive any satisfactory reply at that time. Beginning in early August of that year, Ms. Murphy received a series of communications indicating that she was being required to have a full-scale psychological

* * *

Q. Ms. Murphy, I may have a wrong date in my notes. Was it on July 14th or June 14th that you say you reported for work, when Mr. Young called in and said "Get off the board, Betty, and do what you are supposed to be doing" ?

A. Yes, that was a Tuesday. That was July.

Q. That was July?

A. Yes.

Q. Okay. Now, you say that after Mr. Young — he was calling into the office, he had not come to the office that morning, is that correct?

A. Yes. He called from his house. You see, it is a dimension (sic) and he dials "0" and it goes right into the front.

Q. Had you told anybody you were going to report for work that day?

A. Well, when Mr. Rosmini the day before, when I was really sick, had told me — I was up there for treatment, and here he tells me that when I am better, I am going to be fired, I figured "Oh well, I may as well go in while I was sick".

Mr. Sigmond, I was very sick.

Q. Did you tell Mr. Rosmini when you talked to him that day that you could get a clearance from your doctor to work any old time you want?

A. Never.

Q. Did you tell him that the doctor was willing to clear you for work —

A. The —

JUDGE LADWIG: Did you finish your answer?

THE WITNESS: Yes. Did you mean the 14th?

BY MR. SIGMOND: —

Q. The 13th.

A. The 13th on the phone? I didn't understand.

Q. Yes.

A Is this on the phone? No. Mr. Rosmini told me that Mr. Young said when I get better, I am going to be fired. I said to him "Why are you telling me that now when I am so sick?"

He said "Wendell said to tell you", and that was the end of the conversation. I had treatment that morning. The next morning was Tuesday, the 14th of July. I went to work very sick. I wasn't even feeling — I was feeling terrible.

I opened the switchboard and I was answering the phones. Mr. Young dialed, and he said "Betty, get off the phone and do what you are supposed to be doing".

Q. Did you ask him what he meant by that?

A. No I didn't.

Q. Now, you went to see Mr. Rosmini —

A. I waited for Mr. Rosmini to come in.

Q. And you informed him of your conversation with Mr. Young?

A. Yes. I asked Mr. Rosmini what was I supposed to be doing, and he just shrugged his shoulders because he didn't know.

Q. What did he say to you, Betty?

A. He just shrugged his shoulders, but he was called to the phone. Mr. Young's secretary called him to the phone and he went to Mr. Young's office. And I called the Seafarers Union.

They told me to fill in a grievance form and they would be up — William Holmes.

Q. For what? What were you going to grieve?

A. Well, I don't know. You see, I just called to report — you know, I was told to get off the phone and do what I was supposed to be doing.

Q. You hadn't yet received a doctor's certification that you were able to return to work, is that correct?

A. No I didn't.

Q. You hadn't delivered anything to the Union from your doctor yet, had you?

A. No, Sir, but Mr. Sigmond, if you let me finish. Mr. Rosmini then came back and told me to get well and get a release from the doctor and come back to work. He also told me to get strong.

* * *

Q. I take you back in time to the time you went to see Dr. Abrams and Nemerof for the first time—

A. Um-huh.

Q. —the first time after the June 9th incident.

A. Yes.

Q. Did they refer you at any point to Parkview for tests to determine whether you had any vascular disorders or heart trouble?

A. Yes. I went to—the first time I went was 6-12 and I saw Dr. Nemerof. That was that Friday. I went back Monday for treatment and I had chest pain and I believe it was Dr. Gerber, maybe, of Parkview—he is a Heart Specialist—and I had some tests run.

Q. What tests were performed?

MR. STRICKLER: Your Honor, I am going to object to this line of questioning.

JUDGE LADWIG: What is the objection?

MR. STRICKLER: The objection is that the Respondent has alleged that Ms. Murphy has psychiatric problems apparently or something related to that and a failure to see a psychiatrist is the basis of this termination.

Whatever her particular physical ailments were or what tests she received, or what doctors she went to, I don't believe they have any relevancy, given the termination letter and the other documents which have been presented.

JUDGE LADWIG: It appears to me that Counsel for the Union is helping to build your case. Maybe you should not object to this.

MR. STRICKLER: Well, that is a possible interpretation, Your Honor.

JUDGE LADWIG: I will overrule the objection.

MR. STRICKLER: Okay.

MR. SIGMOND: I assure Your Honor that I am not. I believe that the relevance, just to speak to Mr. Strickler's objection, goes to the bruises on the arm, not the other matters.

BY MR. SIGMOND:

Q. What tests were performed?

A. I had chest tests. I had trouble with breathing; pains in my chest. And I went to the Heart Doctor. I don't

know his name. The report was sent into the Union office.

Q. Was it Parkview Hospital?

A. It was Parkview Hospital.

Q. From the time that you returned to work after the strike, May 16th, 1981, through this meeting with Mr. Young of June 9th, you didn't receive any reprimand or discipline did you, Betty?

A. No, Sir, I didn't.

Q. And in the days leading up to the strike, you easy. But she worked the switchboard, too.

* * *

Q. Did you see her throughout the day—

A. Oh, yes, sure.

Q. —and have occasion to talk to her?

A. Yes.

Q. Did she complain to you about her arm at any time during that day?

A. No.

Q. But she was given permission by you to take some time off from her job that day?

A. Yes.

Q. Would you tell us what occurred next that day?

A. Well, later on that afternoon the letter of warning was typed and I brought Betty into the office and gave her the letter of warning.

Q. And had you called her early in the day and asked her to stop by to see you after she clocked out?

A. Yes.

Q. Now, was there a conversation when you handed her the letter?

A. She opened he letter and read it. She asked why she was—what areas was she insubordinate in. I explained to her that at the meeting with Mr. Young, that she failed to follow his instructions by not leaving his office, and that she was acting loud and boisterous, and this is the reason why she was placed on record.

Q. And what did Ms. Murphy say?

A. She said she didn't understand that. That she would like to talk to Mr. Young.

Q. And what did you do?

A. I left; went into Mr. Young's office and told him I had Betty in my office; I had given her the letter of record, and that she wanted to talk to him.

Mr. Young informed me to tell her to call her Union Representative and set up a grievance meeting.

Q. Did you communicate that to Betty?

A. Yes.

Q. What occurred the following day, on June 11th, 1981?

A. On June 11th, Betty came in to work, clocked in around 12:00, and I heard she came in. I went down. She was down in the Business Agent's office talking to a friend of hers who works for us by the name of Marie Adler.

I asked her what had happened, and she said she was sick that morning, was very upset about that letter. I said what time are you going to start today, and she said "I will start at 1:00".

Q. Now, had she called in that morning to let anybody know she would be late?

A. On that Thursday morning?

Q. To your knowledge?

* * *

did it".

Q. So she said to you that he admitted it?

A. Yes.

Q. Did she tell you his exact words, or did she just characterize it that way?

A. Exactly what I said.

Q. What did you say to her?

A. I said—I didn't say anything to her. She continued by saying "You should ask him". I said "I will" and I hung up and went into his office.

Q. Was Mr. Young there?

A. Yes he was. He had just come in.

Q. What did you say to him and what did he say to you?

A. I said "Wendell, I just talked to Betty. Betty tells me that you admitted grabbing her arm and causing the black and blue marks". He said "That's nonsense. I never said that to her".

Q. Did you have any other communication with Betty that day, June 12?

A. No.

Q. On Sunday evening, June 14, did you have occasion to talk to Betty Murphy?

A. Yes I did.

Q. Tell us what occurred, Mr. Rosmini?

A. She called my home and told me she would be out a few days and she was going to go to Dr. Nemerof.

Q. By the way, on June 12, did she inform you when she asked permission to leave at 3:00, that she was going to see a lawyer?

A. No.

Q. What specifically did she tell you in that regard?

A. That she was going to go to the doctor's. "Can I get off to go to the doctor's?" and I said "Yes".

Q. Okay. Now, would you tell us the conversation that occurred on June 14? I may have cut you off on that.

A. I told her to get to the doctor's and I hoped she was feeling well.

Q. I believe you testified about this, but let's make it clear: she told you that she would be off for a few days?

A. Yes.

Q. That was your testimony? Did she tell you what was wrong with her in that conversation?

A. No.

Q. Did you ask?

A. No.

Q. Why didn't you ask?

A. Well, I knew she was upset on Wednesday. She was upset on Thursday. She was upset on Friday, and I

just felt she was going to go to the doctor's to get her nerves straightened out.

* * *

took her to the hospital, and that she was going to go to the doctor's to find out what was wrong. She had been released by the hospital, and she had gone to Parkwood.

I think it is Parkway or Parkwood.

Q. Parkview?

A. Parkview. It's right down the street from our office.

Q. Do you recall your next communication with Ms. Murphy?

A. On July 13, '81.

Q. When did that occur?

A. She called me at home at 8:00, or round about that time. She told me that she was going to Dr. Nemerof and Abrams' office. That she had gotten very sick over the weekend.

She was very, very weak, and that she wanted to come to work that day. I told her that if she is going to be released by her doctor, that I was going to tell her at that time that she was going to be suspended, pending the investigation of her case and the incidents involving her statements.

She then said "Well, how can you suspend me when I am still out on sick leave?" I said "Are you going to be released or aren't you going to be released?" I said "Upon your release, give me a call".

Q. Did you say anything to her about her being fired—

A. No.

Q. —as soon as she is off sick leave?

A. No.

Q. Did you use the word "fire" at all?

A. Never.

Q. Why was she being suspended at that point?

A. Well, we had agreed upon her termination of sick benefits, we were going to suspend her, pending the investigation.

Q. Of what?

A. The entire matter.

Q. What do you mean by "the entire matter" ?

A. Of the statements, misconduct, the statements made about Mr. Young, the slander statements made on the Health and Welfare forms that went down to Delaware Valley, and some of the statements that were floating around the office that Mr. Young allegedly beat up on her.

Q. Did the property destruction have anything to do with it?

A. Well,—

MR. STRICKLER: Your Honor, I think that Counsel is again leading the witness, suggesting reasons for which particular actions were taken that this witness hasn't suggested, and really that is not appropriated.

* * *

answer you gave?

A. Yes.

Q. As of the date of this conversation with Sister Gloria, had the Union in fact received a letter from Mr. Gerson?

A. Yes.

Q. Would you — you began to testify about this conversation with Sister Gloria. I am not sure whether you completed it because I injected a few questions. Would you go ahead if there was more to that conversation?

A. Basically that was what it was.

Q. When was the next time you saw Ms. Murphy?

A. The next time I heard from Betty Murphy, after the 14th of July, was on July 20, 1981. My recollection is she called me and told me she was going to see Dr. Nemerof and Abrams.

She was having stomach problems and she felt she had a tumor.

Q. She said she thought she had a tumor?

A. Yes.

Q. What did you say to her?

A. I told her to make sure she gets there and make sure she does what they tell them to do.

Q. When was the next conversation you had with Betty Murphy?

A. On July 22, of '81, she called me and told me she was.

* * *

A. Yes.

Q. Would you like to review the letter before I ask you some questions?

A. Not really.

Q. Okay. Prior to sending this letter, were there any discussions — let me ask you why the letter was sent? Tell me what occurred as a result of this letter.

A. After Mr. Young and I sat down and had discussed it, it was agreed that we felt that Betty's actions in this whole matter were irrational, and that in her best interest that we feel she should see a psychiatrist and if there was any problem with her, she could get treatment, and after treatment, return to work.

We do this with our own members.

Q. You say that you felt that Betty was irrational —

JUDGE LADWIG: What do you mean you do this with your own members?

THE WITNESS: We have a program that is called "Info Now" and when a person has a pattern of emotional problems or has a pattern of absenteeism or lateness or things like that, we get him into a program where they see a psychologist for evaluation, and sometimes we put them out — we get them out on sick leave, and upon their return, maybe they would get treatment by a psychologist or a psychiatrist.

JUDGE LADWIG: Are you talking about employees of.

* * *

that it is leading here. The objection is sustained.

BY MR. SIGMOND:

Q. After the June 26th conversation with Ms. Murphy, when was the next time, if you can recall the date, you received any specific communication from her?

A. July 6.

Q. What occured on that date?

A. She called my home and talked to my wife Cass. Told her she was still out sick —

MR. STRICKLER: Your Honor, I object, hearsay.

JUDGE LADWIG: Sustained.

BY MR. SIGMOND:

Q. Did she leave a message with your wife?

A. Yes.

Q. Did your wife communicate the message to you?

A. Yes.

Q. What was communicated to you by your wife, and to avoid an objection, I am not offering it for the truth of what was said, but only for the fact of the communication of this message to Mr. Rosmini?

A. She told my wife to tell me that she had been rushed to the hospital that morning. I guess that was going into Monday morning at 3:00 a.m., with an attack of gastritis.

In fact, my neighbors, Mr. and Mrs. Charles Adler,

* * *

the slanderous remarks on the health and welfare form and "statements Ms. Murphy had made around the office," is that correct?

A. Yes. It goes a little further than that.

Q. Tell us about it.

A. The whole bizarre situation involving the filing for workmen's compensation, the not filing for workmen's compensation; the filing for health and welfare; the incident on the 10th; the statements allegedly being made by her about Mr. Young. We wanted her to get

released from her doctor, we wanted to gather all the evidence and all the documentation and make an evaluation.

Q. Mr. Rosmini, I'll be frank. I don't understand your position on this in that —

MR. SIGMOND: I object to this kind of statement by counsel.

JUDGE LADWIG: Sustained.

BY MR. STRICKLER: (Resuming)

Q. As of July 13th, what was prohibiting the investigation of the June 10th incident?

A. Because we didn't know where she was coming from. We didn't know what she was doing.

Q. Why didn't you investigate it to your heart's content?

A. Because we didn't know whether she was going to file for workmen's comp, health and welfare. We wanted her to

* * *

Q. What I am saying is you said on July 13th, you made a decision, when she has done her sick leave, we are going to put her on suspension pending investigation. One of the things you wanted to investigate was the June 10th incident.

My question is you had a month to investigate that. You had statements from the employees on the 12th of June. Why did you have to hold her out of service a month later for something that could have been investigated for a month?

A. We wanted to wait until she returned to work. We wanted to wait until she was released by her doctor. We wanted to get all the documentation together and make an evaluation of what happened.

JUDGE LADWIG: What further investigation did you plan to make concerning the destruction of her own property?

THE WITNESS: None.

BY MR. STRICKLER: (Resuming)

Q. Why was it necessary to suspend her while you investigated further?

A. That wasn't the only thing we were investigating.

Q. We will lay that one aside. You said you wanted to investigate the statements that she may have made around the office about Mr. Young. She had not been at work for a month. Wasn't a month ample opportunity to investigate those statements?

A. We talked about that and we felt that possibly that accumulation of the case, of the bizarre things that went on over the course of June 9th on.

BY MR. STRICKLER: (resuming)

Q. My question is very specific. You stated that you wished to investigate the statements made by Ms. Murphy on the health and welfare form and I have shown you the form. I want to know what investigation you were contemplating which required holding Ms. Murphy out of service?

A. We had already concluded that she meant the President had grabbed her arm from this statement.

Q. What were you going to do in this investigation?

A. My earlier statement was we were going to accumulate all the facts and make an evaluation of what to do, get all the documentation together and make an evaluation of what to do. We didn't want to do that until she was officially released by her doctor.

JUDGE LADWIG: Are you testifying that there was nothing further to investigate concerning that particular document?

THE WITNESS: That's true; yes.

JUDGE LADWIG: Could that be identified and offered into evidence?

MR. STRICKLER: Yes. I will offer that into evidence, Your Honor, as General Counsel Exhibit No. GO-1-. It is a document entitled "Retail Clerks Tri-State

Health and Welfare Fund" signed at the bottom by Elizabeth Murphy, dated 6-26-81.

* * *

A. It was an ongoing discussion with the case but we wanted to get all the documentation together and make a decision on what to do.

Q. You had all the documentation. You already told us that.

A. We wanted to wait until Ms. Murphy was released by her doctor. That was the decision we had made. We didn't want to do anything while she was in treatment with the doctors.

JUDGE LADWIG: Is this a correct summary of your testimony? As of July 27th, you had all the documentation, that you wanted to wait until after she was released by the doctor before you and Mr. Young decided what to do?

THE WITNESS: That's correct.

JUDGE LADWIG: Thank you.

BY MR. STRICKLER: (Resuming)

Q. On July 30th, Mr. Lennon requested workmen's compensation forms; is that correct?

A. That's correct.

Q. When did you make a decision to send her the August 4th letter suggesting the appointment to see the two doctors?

A. That was sometime after July 27th.

Q. Do you know when?

A. No, I don't know the exact date in time.

Q. Who made the decision?

A. Wendell and I; Mr. Young and I.

Q. Why did you make that decision?

* * *

June 9, 1981?

A. Yes. When I came into the office my secretary, Janice Pinti, had told me that Betty requested a meeting.

Q. Okay, let me just stop you there, because she was identified as Janice Mangini in the record. Is that her name?

A. She got married.

Q. Okay, that is the same as Janice Pinti?

A. Yes.

Q. Go ahead.

JUDGE LADWIG: Could you speak a little louder, please?

THE WITNESS: Yes, I can. She got married.

BY MR. SIGMOND:

Q. Go ahead. She told you that—

A. So I said okay, set it up for 4:15. And that is what we did. By the time that I had the meeting, I knew what the topic was going to be, because of the old grapevine that goes around the office. And Betty arrived at 4:15. And the frame of mind that she was in—

MR. STRICKLER: Your Honor, I object, I do not think that this witness should be testifying as to someone else's state of mind. He should testify about things that he observed. But I do not think that a statement as to another person's state of mind is really probative.

BY MR. SIGMOND:

Q. Let me draw you back.

A. She was very emotional.

MR. STRICKLER: Your Honor, I have an objection on the record. I think it should be ruled on.

JUDGE LADWIG: Objection sustained. Would you tell us what you say and heard, please.

BY MR. SIGMOND:

Q. Let me first—

A. She was very excited.

A. That is okay, we will come back to this. Let me backtrack for a moment. You said that you knew through the grapevine what the discussion would be about.

What did you mean by that?

A. I was told that when the newspaper hit that day, that she was very upset about what was in the newspaper.

Q. And who told you that?

A. A number of people, I guess. I do not know specifically. Just that I was made aware of it, but I don't know who exactly.

Q. Okay, now go ahead. She now arrives at your office. And would you describe her mannerisms, and what you observed, her attitude?

A. I do not know how to do it.

Q. Go ahead.

A. She was very—she walked in, and she had her newspaper there. She was very matter of fact, very aggressive. She walked into the office. I sat her down. The way that she described the seating arrangement yesterday was not the way it was.

Q. Would you describe the seating arrangement?

A. Yes. Can I get up and show?

JUDGE LADWIG: Please.

THE WITNESS: This is my table. She said that she was sitting here, and I was sitting there. Actually, she was sitting here, and I was sitting there. This is a wall.

JUDGE LADWIG: She was sitting across from the table, instead of both of you sitting on either end of the table?

THE WITNESS: Right. That is very important. Because where she was describing where she was sitting at that end is very close to the door. And if I did all of these things that I was supposed to have done, I could not have possibly have done them with her sitting there.

I would have had to lean over the table. And the table is about as wide as that. There is no way that I could have touched her. So that is very important, the way that she described where we sat, and where she actually sat.

BY MR. SIGMOND:

Q. The seat that she was sitting in across from you had its back to a wall?

A. Yes.

Q. Is that correct?

A. Right.

Q. And how much room was there between the edge of the table and the wall?

A. See that table and that wall. I would say another four or five inches of that. The end of this table to that wall, about another four or five inches.

JUDGE LADWIG: Is that twelve or fifteen inches from the wall?

THE WITNESS: Something in that area. Not much further in distance that that is.

MR. STRICKLER: Your Honor, I would say that that distance is two feet.

JUDGE LADWIG: Are you talking about the table or the chair?

THE WITNESS: It is almost, I would say, another six inches more than this.

JUDGE LADWIG: How far would you say that is?

MR. STRICKLER: Two and a half feet.

BY MR. SIGMOND:

Q. Give your best estimate, Mr. Young, not Mr. Strickler's estimate.

A. I would say he is right.

Q. Okay, fine.

She was sitting in the seat between the table and the wall, is that correct?

A. Yes.

Q. When she entered the room, did you say anything to her initially?

A. I said hello, you know, or whatever the salutation. And she sat down, and I said what is on your mind. And right away, she started in a very high pitched voice describing what she felt was very, very wrong what I did about the letter that was published in the newspaper, and that it was against the understanding that we had after the strike, that there would be no retaliation.

And I said Betty, I am going to tell you what happened on that letter, but you are not even going to listen to me. And I started to describe why that letter was published. And she did not even listen. She just kept looking

up in the air. And I said well, I have to go through this process.

Q. Well, the record will not be able to see what you just did, Mr. Young.

A. She was staring at the ceiling with her arms folded, and just staring at the ceiling. And she stared down here, not looking at me, like rejecting what I was saying.

Q. This was while you were explaining to her what had happened which resulted in the publication of the letter?

A. Right. I said that there was a reason for why we did that.

Q. Would you explain what you told her?

A. What happened was this. During the strike —

JUDGE LADWIG: Pardon me, is this what you told her?

THE WITNESS: Yes.

JUDGE LADWIG: Would you try to recall just what you told her on that occasion?

THE WITNESS: Yes.

JUDGE LADWIG: Without explaining what happened during the strike.

THE WITNESS: Well, this is what I said. I said during the strike, there was an article in the Daily News that was completely one-sided. And I was very upset with that. I said I don't care what you said representing your people. But I was upset that they published in the Daily News that the union was unavailable for comment, when in fact I was the one who told the Daily News who to contact from the office employees to get their comment.

I had written the Daily News criticizing them for not quoting me, and saying in fact that I was unavailable for comment. I wrote this complete letter. They had agreed to publicize the letter, but they never did. So simultaneoulsy when the newspaper came out that day,

which you have, also simultaneously the Daily News publishes a revised letter.

So from her point of mind, she thought everything was coming down on her.

MR. STRICKLER: Your Honor, I do not think that Mr. Young should be testifying as to Ms. Murphy's state of mind.

JUDGE LADWIG: Sustained. Would you just say what was — tell us what was said by both of you on that occasion.

THE WITNESS: So I described what I just described, explaining why I did it, and it did not even make an indent. Then she started going into the issue of what the letter was about. She said that letter was a lie, an absolute lie. And she stated the girls' in the office overtime, and the fact that they had to work overtime, was due to the fact that my secretary, and Peter Mark's secretary, when they go to lunch, they had a replacement.

And I said "I don't even want to discuss it with you, Betty, that is not the issue." And she said "That is the issue, and I demand a retraction." And she screamed it, "I demand a retraction." I said "Betty, forget it. I am not going to carry on anymore of this conversation. Call your union."

"I demand it," she started screaming at the top of her lungs, "I demand it. The only time that you listen to me is if I have to get dirty. And the only people that you listen to are Pat Scarrelli and Jackie McPeak." And I just sat back. I started to respond loudly myself, like I am doing now, and I caught myself.

I said, "Look, go see your union, go see your union." I must have said that ten times. And then she screamed at the top of her lungs, "You hate me because I am Irish." She said, "Is your wife going to be home tonight?" I said, "What does that have to do with the price of beans in Puerto Rico?" She said, "Is your wife going to be home tonight?" I said, "What does that have to do with it?

Come on, get out of the office, go see your union. We are finished with this conversation."

I opened the door, and I asked her to leave. And she got up and left. I did not touch her. And that whole thing is absolutely ludricous, those pictures, absolutely ludicrous.

BY MR. SIGMOND:

Q. Did you in any way, shape, or form lay a hand on her even inadvertently?

A. No.

Q. Where were you when you walked up to go to the door?

A. I was — well, I went from where the lawyer is sitting, I was a little further in the middle. I walked over to the side around the table, and opened the door.

Q. When you say around the table, the record cannot follow your finger as pointing, and we do not want this misunderstood.

A. I walked from the middle of the table, walked over to the entrance of the door, and opened the door.

Q. You did not do a complete circle of the table, did you?

A. No.

Q. Where was Ms. Murphy?

A. Betty was sitting in the middle there. And when she started to scream and yell, she was not sitting down like she testified yesterday. She was actually standing pounding on the table, pounding on the table, "I demand this. I demand that ." I thought to myself, this is ridiculous, am I going to take this. I said this is absolutely ridiculous. I am thinking to myself.

Q. How did you interpret the remarks about Pat Scarelli and Jackie McPeak?

MR. STRICKLER: Your Honor, I object. I do not care how he interpreted them.

JUDGE LADWIG: Sustained.

MR. SIGMOND: I think, Your Honor, that this is important with respect to the motivation concerning events that occurred later.

MR. STRICKLER: Your Honor, I would state that the witness is capable of testifying as to things that he hears and sees. But as to his state of mind, a very subjective form of testimony has been found by the Board to be inherently unreliable, and generally is not admitted under whatever circumstances.

And I think that he should testify as to what he saw and heard. And if counsel wishes to argue that some inference could have been drawn from that, or was drawn from that, that is fine. But that he should testify only as to what he saw and heard, and not as to inferences that he drew.

MR. SIGMOND: This man is on trial for his thoughts and motivations. And he is certainly entitled to testify as to what his interpretation of remarks were.

JUDGE LADWIG: Just a minute. I will reverse my ruling, overruled.

MR. SIGMOND: Your Honor will permit the question?

JUDGE LADWIG: Yes.

MR SIGMOND: Thank you, sir.

BY MR. SIGMOND:

Q. Mr. Young, how did you interpret the remarks concerning Pat Scarelli and Jackie McPeak?

A. It was meant for me to absorb, the way I felt was I went to bed with them.

Q. How did you interpret the remarks, and what went through your mind, when she was saying in that context, "Is your wife going to be home tonight?"

A. She implied, she said she was going to call my home that night, if my wife was home. Actually she said, "Is your wife going to be home tonight?" And I said, "What does that have to do with anything?" I said, "What does that have to do with the price of beans in Puerto Rico?" That is exactly what I said.

Q. Would you describe the tone of voice exhibited by Betty Murphy throughout the conversation?

A. Screaming, screaming, very loud.

Q. Did you observe Betty Murphy's testimony in the courtroom yesterday?

A. Nothing like that, nothing at all. Nothing whatsoever like that.

Q. Answer yes or no.

A. Did I observe it?

Q. Yes.

A. Yes.

Q. And how would you describe her testimony in the courtroom yesterday in terms of voice?

A. It was nothing like the way she was in my office.

Q. Describe the tone of voice she used in the courtroom yesterday. Mr. Young.

A. Very subdued.

Q. Have you have other meetings and conversations prior to June 9, 1981 with Betty Murphy?

MR. STRICKLER: Objection, Your Honor, relevancy.

JUDGE LADWIG: How is it relevant?

MR. SIGMOND: It is meant to demonstrate that the Charging Party's personality was frequently of the nature that was exhibited on June 9, 1981, and not of the demure, sweet, little nature that was exhibited in this courtroom.

MR. STRICKLER: Your Honor, I would say that I am not

* * *

BY MR. STRICKLER:

Q. Is that correct?

A. Yes.

Q. Why did you find it so extraordinary that she should show up for work, and be on the phones on July 14th?

A. Are you serious?

Q. I am serious. She is an employee. She works on the phones.

A. You mean—

Q. Why should she not be there?

JUDGE LADWIG: Pardon me. Can you answer the question directly.

THE WITNESS: Yes. It was extraordinary because of everything that I just finished stating.

BY MR. STRICKLER:

Q. Had anyone ever indicated to her that she was not an employee in good standing, and to come to work when she was able to come to work?

A. Nobody could get in touch with her, only when she wanted to get in touch with people. And you just do not walk in with all of these things that we were trying to get in touch with her, you just do not walk in.

Q. But if you are an employee, and nobody has ever told you that you are suspended, discharged, or anything else, and you want to come to work, can't you come to work?

A. Nobody could get in touch with her.

JUDGE LADWIG: Is that your only answer?

THE WITNESS: That is my only answer; yes, sir.

BY MR. STRICKLER:

Q. Is it your testimony that you had no knowledge that Mr. Rosmini had been in contact with her?

A. Mr. Rosmini was in contact with her as she was contacting Mr. Rosmini. We many times could not get in touch with her.

Q. But he was in contact with her. If the understanding was that you are not to come to work, why had he not told her that? Was she suspended at that time?

A. Because at that time she was stating that she was sick.

Q. So she shows up to work, and says that I am well. What is so wrong when you call up, and find an employee of yours doing her job; why shouldn't she be doing it?

A. Because we were investigating it. She had not submitted a form. She had submitted a form for what her sickness was. And there were things that were surrounding the incident.

Q. Had you sent her a suspension letter?

A. Had I sent her a suspension letter?

Q. Yes.

MR. SIGMOND: When?

BY MR. STRICKLER:

Q. As of July 14th.

A. Did I send her a suspension letter, no.
easy. But she worked the switchboard, too.

Q. Did you see her throughout the day—

A. Oh, yes, sure.

Q. —and have occasion to talk to her?

A. Yes.

Q. Did she complain to you about her arm at any time during that day?

A. No.

Q. But she was given permission by you to take some time off from her job that day?

A. Yes.

Q. Would you tell us what occurred next that day?

A. Well, later on that afternoon the letter of warning was typed and I brought Betty into the office and gave her the letter of warning.

Q. And had you called her early in the day and asked her to stop by to see you after she clocked out?

A. Yes.

Q. Now, was there a conversation when you handed her the letter?

A. She opened the letter and read it. She asked why she was—what areas was she insubordinate in. I explained to her that at the meeting with Mr. Young, that she failed to follow his instructions by not leaving his office, and that she was acting loud and boisterous, and this is the reason why she was placed on record.

Q. And what did Ms. Murphy say?

A. She said she didn't understand that. That she would like to talk to Mr. Young.

Q. And what did you do?

A. I left; went into Mr. Young's office and told him I had Betty in my office; I had given her the letter of record, and that she wanted to talk to him.

Mr Young informed me to tell her to call her Union Representative and set up a grievance meeting.

Q. Did you communicate that to Betty?

A. Yes.

Q. What occurred the following day, on June 11th, 1981?

A. On June 11th, Betty came in to work, clocked in around 12:00, and I heard she came in. I went down. She was down in the Business Agent's office talking to a friend of hers who works for us by the name of Marie Adler.

I asked her what had happened, and she said she was sick that morning, was very upset about that letter. I said what time are you going to start today, and she said "I will start at 1:00".

Q. Now, had she called in that morning to let anybody know she would be late?

A. On that Thursday morning?

Q. To your knowledge?

* * *

Q. Ms. Murphy, I may have a wrong date in my notes. Was it on July 14th or June 14th that you say you reported for work, when Mr. Young called in and said "Get off the board, Betty, and do what you are supposed to be doing"?

A. Yes, that was a Tuesday. That was July.

Q. That was July?

A. Yes.

Q. Okay. Now, you say that after Mr. Young—he was calling into the office, he had not come to the office that morning, is that correct?

A. Yes. He called from his house. You see, it is a dimension (sic) and he dials "0" and it goes right into the front.

Q. Had you told anybody you were going to report for work that day?

A. Well, when Mr. Rosmini the day before, when I was really sick, had told me—I was up there for treatment, and here he tells me that when I am better, I am going to be fired, I figured "Oh well, I may as well go in while I was sick".

Mr. Sigmond, I was very sick.

Q. Did you tell Mr. Rosmini when you talked to him that day that you could get a clearance from your doctor to work any old time you want?

A. Never.

Q. Did you tell him that the doctor was willing to clear you for work—

A. The—

JUDGE LADWIG: Did you finish your answer?

THE WITNESS: Yes. Did you mean the 14th?

BY MR. SIGMOND:

Q. The 13th.

A. The 13th on the phone? I didn't understand.

Q. Yes.

A. Is this on the phone? No. Mr. Rosmini told me that Mr. Young said when I get better, I am going to be fired. I said to him "Why are you telling me that now when I am so sick?"

He said "Wendell said to tell you", and that was the end of the conversation. I had treatment that morning. The next morning was Tuesday, the 14th of July. I went to work very sick. I wasn't even feeling—I was feeling terrible.

I opened the switchboard and I was answering the phones. Mr. Young dialed, and he said "Betty, get off the phone and do what you are supposed to be doing".

Q. Did you ask him what he meant by that?

A. No I didn't.

Q. Now, you went to see Mr. Rosmini—

A. I waited for Mr. Rosmini to come in.

Q. And you informed him of your conversation with Mr. Young?

A. Yes. I asked Mr. Rosmini what was I supposed to be doing, and he just shrugged his shoulders because he didn't know.

Q. What did he say to you, Betty?

A. He just shrugged his shoulders, but he was called to the phone. Mr. Young's secretary called him to the phone and he went to Mr. Young's office. And I called the Seafarers Union.

They told me to fill in a grievance form and they would be up—William Holmes.

Q. For what? What were you going to grieve?

A. Well, I don't know. You see, I just called to report—your know, I was told to get off the phone and do what I was supposed to be doing.

Q. You hadn't yet received a doctor's certification that you were able to return to work, is that correct?

A. No I didn't.

Q. You hadn't delivered anything to the Union from your doctor yet, had you?

A. No, Sir, but Mr. Sigmond, if you let me finish. Mr. Rosmini then came back and told me to get well and get a release from the doctor and come back to work. He also told me to get strong.

* * *

Q. I take you back in time to the time you went to see Dr. Abrams and Nemerof for the first time—

A. Um-huh.

Q. —the first time after the June 9th incident.

A. Yes.

Q. Did they refer you at any point to Parkview for tests to determine whether you had any vascular disorders or heart trouble?

A. Yes. I went to—the first time I went was 6-12 and I saw Dr. Nemerof. That was that Friday. I went back

Monday for treatment and I had chest pain and I believe it was Dr. Gerber, maybe, of Parkview—he is a Heart Specialist—and I had some tests run.

Q. What tests were performed?

MR. STRICKLER: Your Honor, I am going to object to this line of questioning.

JUDGE LADWIG: What is the objection?

MR. STRICKLER: The objection is that the Respondent has alleged that Ms. Murphy has psychiatric problems apparently or something related to that and a failure to see a psychiatrist is the basis of this termination.

Whatever her particular physical ailments were or what tests she received, or what doctors she went to, I don't believe they have any relevancy, given the termination letter and the other documents which have been presented.

JUDGE LADWIG: It appears to me that Counsel for the Union is helping to build your case. Maybe you should not object to this.

MR. STRICKLER: Well, that is a possible interpretation, Your Honor.

JUDGE LADWIG: I will overrule the objection.

MR. STRICKLER: Okay.

MR. SIGMOND: I assure Your Honor that I am not. I believe that the relevance, just to speak to Mr. Strickler's objection, goes to the bruises on the arm, not the other matters.

BY MR. SIGMOND:

Q. What tests were performed?

A. I had chest tests. I had trouble with breathing; pains in my chest. And I went to the Heart Doctor. I don't know his name. The report was sent into the Union office.

Q. Was it Parkview Hospital?

A. It was Parkview Hospital.

Q. From the time that you returned to work after the strike, May 16th, 1981, through this meeting with Mr.

Young of June 9th, you didn't receive any reprimand or discipline, did you, Betty?

A. No, Sir, I didn't.

Q. And in the days leading up to the strike, you

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that it is leading here. The objection is sustained.

BY MR. SIGMOND:

Q. After the June 26th conversation with Ms. Murphy, when was the next time, if you can recall the date, you received any specific communication from her?

A. July 6.

Q. What occured on that date?

A. She called my home and talked to my wife Cass. Told her she was still out sick—

MR. STRICKLER: Your Honor, I object, hearsay.

JUDGE LADWIG: Sustained.

BY MR. SIGMOND:

Q. Did she leave a message with your wife?

A. Yes.

Q. Did your wife communicate the message to you?

A. Yes.

Q. What was communicated to you by your wife, and to avoid an objection, I am not offering it for the truth of what was said, but only for the fact of the communication of this message to Mr. Rosmini.

A. She told my wife to tell me that she had been rushed to the hospital that morning. I guess that was going into Monday morning at 3:00 a.m., with an attack of gastritis.

In fact, my neighbors, Mr. and Mrs. Charles Adler, took her to the hospital, and that she was going to go to the doctor's to find out what was wrong. She had been released by the hospital, and she had gone to Parkwood.

I think it is Parkway or Parkwood.

Q. Parkview?

A. Parkview. It's right down the street from our office.

Q. Do you recall your next communication with Ms. Murphy?

A. On July 13, '81.

Q. When did that occur?

A. She called me at home at 8:00, or round about that time. She told me that she was going to Dr. Nemerof and Abrams' office. That she had gotten very sick over the weekend.

She was very, very weak, and that she wanted to come to work that day. I told her that if she is going to be released by her doctor, that I was going to tell her at that time that she was going to be suspended, pending the investigation of her case and the incidents involving her statements.

She then said "Well, how can you suspend me when I am still out on sick leave?" I said "Are you going to be released or aren't you going to be released?" I said "Upon your release, give me a call".

Q. Did you say anything to her about her being fired—

A. No.

Q. —as soon as she is off sick leave?

A. No.

Q. Did you use the word "fire" at all?

A. Never.

Q. Why was she being suspended at that point?

A. Well, we had agreed upon her termination of sick benefits, we were going to suspend her, pending the investigation.

Q. Of what?

A. The entire matter.

Q. What do you mean by "the entire matter"?

A. Of the statements, misconduct, the statements made about Mr. Young, the slander statements made on the Health and Welfare forms that went down to Delaware Valley, and some of the statements that were floating around the office that Mr. Young allegedly beat up on her.

Q. Did the property destruction have anything to do with it?

A. Well,—

MR. STRICKLER: Your Honor, I think that counsel is again leading the witness, suggesting reasons for which particular actions were taken that this witness hasn't suggested, and really that is not appropriate.

* * *

answer you gave?

A. Yes.

Q. As of the date of this conversation with Sister Gloria, had the Union in fact received a letter from Mr. Gerson?

A. Yes.

Q. Would you — you began to testify about this conversation with Sister Gloria. I am not sure whether you completed it because I injected a few questions. Would you go ahead if there was more to that conversation?

A. Basically that was what it was.

Q. When was the next time you saw Ms. Murphy?

A. The next time I heard from Betty Murphy, after the 14th of July, was on July 20, 1981. My recollection is she called me and told me she was going to see Dr. Nemerof and Abrams.

She was having stomach problems and she felt she had a tumor.

Q. She said she thought she had a tumor?

A. Yes.

Q. What did you say to her?

A. I told her to make sure she gets there and make sure she does what they tell them to do.

Q. When was the next conversation you had with Betty Murphy?

A. On July 22 of '81, she called me and told me she was

* * *

the slanderous remarks on the health and welfare form

and "statements Ms. Murphy had made around the office," is that correct?

A. Yes. It goes a little further than that.

Q. Tell us about it.

A. The whole bizarre situation involving the filing for workmen's compensation, the not filing for workmen's compensation; the filing for health and welfare; the incident on the 10th; the statements allegedly being made by her about Mr. Young. We wanted her to get released from her doctor, we wanted to gather all the evidence and all the documentation and make an evaluation.

Q. Mr. Rosmini, I'll be frank. I don't understand your position on this in that —

MR. SIGMOND: I object to this kind of statement by counsel.

JUDGE LADWIG: Sustained.

BY MR. STRICKLER: (Resuming)

Q. As of July 13th, what was prohibiting the investigation of the June 10th incident?

A. Because we didn't know where she was coming from. We didn't know what she was doing.

Q. Why didn't you investigate it to your heart's content?

A. Because we didn't know whether she was going to file for workmen's comp, health and welfare. We wanted her to

* * *

Q. What I am saying is you said on July 13th, you made a decision, when she has done her sick leave, we are going to put her on suspension pending investigation. One of the things you wanted to investigate was the June 10th incident.

My question is you had a month to investigate that. You had statements from the employees on the 12th of June. Why did you have to hold her out of service a month later for something that could have been investigated for a month?

A. We wanted to wait until she returned to work. We wanted to wait until she was released by her doctor. We wanted to get all the documentation together and make an evaluation of what happened.

JUDGE LADWIG: What further investigation did you plan to make concerning the destruction of her own property?

THE WITNESS: None.

BY MR. STRICKLER: (Resuming)

Q. Why was it necessary to suspend her while you investigated further?

A. That wasn't the only thing we were investigating.

Q. We will lay that one aside. You said you wanted to investigate the statements that she may have made around the office about Mr. Young. She had not been at work for a month. Wasn't a month ample opportunity to investigate those statements?

A. We talked about that and we felt that possibly that

* * *

accumulation of the case, of the bizarre things that went on over the course of June 9th on.

BY MR. STRICKLER: (Resuming)

Q. My question is very specific. You stated that you wished to investigate the statements made by Ms. Murphy on the health and welfare form and I have shown you the form. I want to know what investigation you were contemplating which required holding Ms. Murphy out of service?

A. We had already concluded that she meant the President had grabbed her arm from this statement.

Q. What were you going to do in this investigation?

A. My earlier statement was we were going to accumulate all the facts and make an evaluation of what to do, get all the documentation together and make an evaluation of what to do. We didn't want to do that until she was officially released by her doctor.

JUDGE LADWIG: Are you testifying that there was nothing further to investigate concerning that particular document?

THE WITNESS: That's true; yes.

JUDGE LADWIG: Could that be identified and offered into evidence?

MR. STRICKER: Yes. I will offer that into evidence, Your Honor, as General Counsel Exhibit No. GC-14. It is a document entitled "Retail Clerks Tri-State Health and Welfare Fund" signed at the bottom by Elizabeth Murphy, dated 6-26-81.

* * *

A. It was an ongoing discussion with the case but we wanted to get all the documentation together and make a decision on what to do.

Q. You had all the documentation. You already told us that.

A. We wanted to wait until Ms. Murphy was released by her doctor. That was the decision we had made. We didn't want to do anything while she was in treatment with the doctors.

JUDGE LADWIG: Is this a correct summary of your testimony? As of July 27th, you had all the documentation, that you wanted to wait until after she was released by the doctor before you and Mr. Young decided what to do?

THE WITNESS: That's correct.

JUDGE LADWIG: Thank you.

BY MR. STRICKLER: (Resuming)

Q. On July 30th, Mr. Lennon requested workmen's compensation forms; is that correct?

A. That's correct.

Q. When did you make a decision to send her the August 4th letter suggesting the appointment to see the two doctors?

A. That was sometime after July 27th.

Q. Do you know when?

A. No. I don't know the exact date in time.

Q. Who made the decision?

A. Wendell and I; Mr. Young and I.

Q. Why did you make that decision?

BY MR. SIGMOND.

Q. Go ahead?

A. Ronnie informed me that she was taken to the hospital in the middle of the night by one of our other employees. And that was one incident.

Q. Were you told anything about why she was taken to the hospital?

MR. STRICKLER: Your Honor, I have difficulty that this is not being admitted for the truth of the matter stated.

JUDGE LADWIG: It is offered for the truth. Therefore your objection is overruled.

BY MR. SIGMOND:

Q. Go ahead, Mr. Young.

A. In the incident of the hospital, I was told — I would have to agree with him almost. It was secondhand — I was told that it was drugs, and pills, and liquor. That is secondhand.

Q. About when did you receive that, was at or about the time when you heard that she was taken to the hospital?

A. Did I receive that?

Q. Yes.

A. At the same time, yes.

Q. Did that concern you?

A. Yes. As I told you before, I really feel sorry for her.

Q. How many years had you known Betty Murphy?

* * *

Q. Go ahead.

A. My opinion is that when I went down to the business agents to tell about the suspension, when I went down to tell about the suspension, one of the business agents called her to tell her what was going to happen — and this is my opinion — and that this precipitated this other incident to throw the thing off. Just like this whole

hearing is precipitating — it is my opinion — it threw the thing off, to lay off it.

Then when I talked to John McKeon that Thursday, and told him exactly the whole thing, what I thought, what statements I had, he says, "Wendell, don't do anything." He says, "Let me get a meeting with Betty Murphy, you, and I." He says, "How are you the 16th and 17th, how are you —" Wednesday or Thursday, I think it was, or Tuesday or Wednesday. I said, "Fine, fine, okay."

He says, "I will call you." He called me back — I was supposed to call him back. He called her, and went over the whole thing with Betty including the incident about the Irish thing. That is when the hand thing came into play. Because he knew that I was very upset about this, and that —

MR. STRICKLER: Your Honor, I think that Mr. Young should not be testifying about conversations between Mr. McKeon and Ms. Murphy. He was obviously not a party to that conversation, and he should not be testifying about some conversation between two other people.

JUDGE LADWIG: Sustained.

BY MR. SIGMOND:

Q. Did Mr. McKeon inform you that he had spoken to Ms. Murphy?

A. Yes, yes, he told me. When I called him Friday, he said that he would talk to Betty Murphy, and would I be willing to have a meeting, and that he would set it up. Because he could not make it, but he advised me that he was going to send another gentleman in to set up the meeting.

Q. Prior to the time that you spoke to Mr. McKeon, had Ms. Murphy complained about her arm at all?

A. No, I never heard anything. I never heard a word.

Q. Did you hear anything about any allegation that you had assaulted her, and caused the bruises?

A. Nope, nope.

Q. Go ahead.

A. That happened Friday. I mean that was the next thing. I come walking in the office. I am walking up this corridor. And she was like perching for you. She ran over to me and says, "Look, see what you did to my arm. You see what you did to my arm."

MR. SIGMOND: The record should indicate that Mr. Young is pointing.

THE WITNESS: I was pointing.

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